TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1908/2009 - EX[DB] WITH E/S/1965/2009-EX Date 19/02/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S TIRUPATI STRUCTURALS LTD.
A-6/5, SITE-IV, INDL. AREA, SAHIBABAD,
GHAZIABAD.

M/S TIRUPATI STRUCTURALS LTD. Appellant
Vs
C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of ~~**Final order No.**~~ STAY ORDER NO. 126/2010-EX. 71/ 2010 **EX[DB]** dated 01-2-2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/S/1965/09 in E/1908/09

M/s. Tirupati Structurals Ltd. Appellants

Versus

CCE, Ghaziabad Respondent

Appearance
Sh. Rajesh Chhibber, Adv. For Appellants

Sh. Anil Khanna, DR for Respondent

Coram: Hon'ble Mr. JUSTICE R.M.S.KHANDEPARKAR, PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of hearing : 1.2.2010
Stay Order No 126/2010-EX

Per Justice R.M.S.Khandeparkar:

Heard. As we find the impugned order is not sustainable, we dispose of this application by directing the registry to place the appeal itself for final disposal forthwith.

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

km

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.1908/09

[Arising out of Order-in-Appeal No.86-CE/GZB/2009 dt.30.3.09 passed by the Commissioner(Appeals),Ghaziabad)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? Yes

2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? No

3. Whether their Lordships wish to see the fair : copy of the order? Seen

4. Whether order is to be circulated to the : Department Authorities: No

M/s. Tirupati Structurals Ltd. Appellants

Versus

CCE, Ghaziabad Respondent

Appearance

Sh. Rajesh Chhibber, Adv. for Appellants

Sh. Anil Khanna, Authorised Departmental Representative(DR) For Respondent

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar,President
Hon'ble Mr. Rakesh Kumar, Member(Technical)

Final

Date of decision: 1.2.2010
Oral Order No. 71/2010-Ex

Per Justice RMS Khandeparkar:

Heard learned Advocate for the appellants and learned DR for the respondent. This appeal is being heard in terms of order passed today in stay application NoE/S/1965/09.

2. The appellants are engaged in manufacturing and marketing of PVC Pipes Fitting, PVC Pipes and Lubricated HDPE Pipes falling under Chapter 39 of Central Excise Tariff Act,1985. Based on certain information regarding clandestine removal of the product, the premises of the appellants were inspected and certain documents were seized based on which investigation was carried out and show cause notice dated 8.3.2007 came to be issued requiring the appellants to show cause against demand of duty to the tune of Rs.10,60,526/- and Rs.21,210/-. Pursuant to contest after hearing the parties, the Additional Commissioner, Ghaziabad by his order dated 7.7.2008 dropped the proceedings. Being aggrieved, the Department preferred appeal before the Commissioner(Appeals), Meerut which came to be allowed by the impugned order dated 8.3.09.

3. Though the impugned order is sought to challenge on various grounds suffice to refer to the ground that the Commissioner(Appeals) without perusing and analyzing the documentary evidence which formed the basis for dropping the proceedings against the appellants proceeded to set aside the order passed by the adjudicating authority and to confirm the demand of duty against the appellants.

4. Indeed perusal of the order passed by the adjudicating authority discloses reference to various documentary evidence which was seized in the course of investigation by the Department and on analysis thereof finding in favour of the appellants. As against this, the impugned order while accusing the appellants of failure to produce the documents, proceeded to set aside the findings arrived at by the adjudicating authority without perusing those documents and without ascertain as to whether the findings arrived at by the adjudicating authority were borne out from the records or not. One fails to understood as to how the assessee could have been accused of non-production of documents which were already in possession of the department, pursuant to seizure thereof by the department in the course of investigation. On this ground alone, the impugned order is liable to be set aside and matter needs to be remanded to the Commissioner(Appeals) to consider appeal afresh in accordance with provisions of law and after taking into consideration all the documentary evidence on record.

5. Appeal is accordingly allowed. The impugned order is hereby set aside and the matter is remanded to the Commissioner(Appeals) for fresh decision in the matter after hearing the parties in accordance with provisions of law

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

km