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

Date 12/04/2010

Appeal No. E/194 /2006 - EX[DB]

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

To :
LAKSHMI STEEL ROLLING MILL.
G.T. ROAD, OPP. POWER HOUSE, KHANNA
LAKSHMI STEEL ROLLING MILL. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 171/ 2010 EX[DB]** dated 09-4-10 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. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.BALBIR SINGH
   MASTAN & CO,C-5/9,SAFDARJUNG ENCLAVE,N.DELHI
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.194/2006-Ex

(Arising out of order in original No.47/DLH/05 dated 14.11.2005 passed by the Commissioner of Central Excise, Ludhiana)

M/s Laxmi Steel Rolling Mills Appellant

Vs

CCE, Ludhiana Respondent

Appeared for the Appellant : Shri Rupinder Singh, Advocate
Appeared for the Respondent : Shri Sansar Chand, SDR

Coram: **Hon'ble Mr. D.N. Panda, Judicial Member**
Hon'ble Rakesh Kumar, Technical Member

Date of Hearing:10.3.2010

FINAL Order No. 171/2010 EX /2010

Per D.N. Panda:

This appeal in third round of litigation is outcome of the re-adjudication done consequent upon Final order No. 92/2005-B passed on 24.1.2005 in Appeal Case No.E/3994/04-NB(B) by the Tribunal.

2. In the first round of litigation the appellant was before Larger Bench in a batch of appeal disposed by Final Order No. A/953 to 957/2002-NB(DB) on 8.4.2002 directing for re-determination of capacity. Re-adjudication was done consequent upon decision of Larger Bench by order in original No. 38/LDH/04 dated 6.4.2004 granting no relief to the assessee. That gave rise to Appeal No. E/3994/04-NB(B) in second round of litigation before the Tribunal. The denovo adjudication was set aside and the matter was

remanded with direction for fresh determination of capacity in terms of para 3 of appeal order reading as under:-

"A perusal of the record shows that while remanding the case, we have not recorded any finding as to what was the type of furnace used in the appellant's premises. Therefore, this issue was open for consideration in adjudication by the Commissioner. Accordingly, the matter is required to go back to the Commissioner for a fresh determination of capacity after considering the nature of the furnace. In order to facilitate the same, the impugned order is set aside and the matter is remitted to the Commissioner."

3. In the re-adjudication under present appeal, learned Adjudicating Authority stated that the capacity determined by Order No. 1/53/CE/CL/99 dated 1.12.1999 was affirmed by Order No. 1/CE/2001 dated 2.1.2001. This clearly shows that inspite of direction given by the Tribunal on 24.1.2005 vide Final order No. 92/2005-B, that was not carried out. The authority had proceeded with a pre-meditated mind to confirm adjudication without fresh determination of the capacity and finally held that the furnace of the appellant was beyond doubt a "Pusher type Re-Heating furnace.

4. Learned Counsel for the appellant submits that when the appellant had no furnace of the type determined by the adjudication order under appeal and such order was passed on 14.11.2005 without conducting technical test and considering the entire submission of the appellant, re-determination thereof is necessary before determining duty liability, if any.

5. Learned DR submits that consequent upon direction of the Tribunal, re-determination of capacity was done. Therefore, there is no infirmity in the order of adjudication.

6. We heard this matter yesterday i.e. on 9.3.2010 and found that the appellant has been denied justice without conducting a fair trial by the Authority below. When the Tribunal passed an order on 24.1.2005, that order was passed noticing that fair opportunity for presentation of the case by the appellant was not given by the Authority below. When the Authority discloses his mind that he has no reason to differ from the conclusion arrived by two orders i.e. order dated 1.12.1999 and 2.1.2001, we are unable to approve such adjudication order which is a pre-judged order.

7. Learned DR states that Revenue will not take time to re-determine the capacity of the furnace according to the direction of the Tribunal when the appellant repeatedly litigates the matter. When such a proposition comes from Revenue, although we are not inclined to remit the matter again, we consider it proper that the matter should go back to the learned Adjudicating Authority as a last chance to that Authority to properly determine the capacity in accordance with law, affording fair opportunity of hearing to the appellant.

8. In view of our proposition to remand the matter to the learned adjudicating authority we allow one month time to the appellant to prepare its defence reply and submit the same before the learned adjudicating authority within 45 days from today. After the reply is filed, learned adjudicating authority shall fix the

date of hearing as well as dispose the matter within one month of last date of hearing of the matter.

9. In the result, appeal is remanded to the Authority as stated aforesaid.

(order dictated in the open Court.)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*