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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/2015 - 2016/2008 – SM[BR] Date 03/09/2010

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

To :
M/S UPPER INDIA STEEL MANUFACTURING AND
ENGINEERING CO.,
FOCAL POINT, LUDHIANA.

M/S UPPER INDIA STEEL MANUFACTURING AND ENGINEERING CO., Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 941 – 942 / 2010-SM[BR] dated 25.8.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.
3 S.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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

8. M/S UPPER INDIA STEEL MANUFACUTURING AND ENGINEERING CO.,
FOCAL POINT, LUDHIANA.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 2015-2016 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 163-164/CE/Ldh/2008 dated 20.6.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Upper India Steel Manufacturing and Engineering Co. — Appellants

Vs.

Commissioner of Central Excise Ludhiana — Respondent

Appearance: Shri Vikrant Kackria, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 25.08.2010

Final **ORAL ORDER NO.** 941-942/2010 SM (BR)

Per M. Veeraiyan:

These two appeals arise out of common order in appeal No. 163-164/CE/Ldh/2008 dated 20.6.08 which in turn arose out of common order in original dated 5.10.07 which was passed in pursuance of Tribunal's remand order No. A-1033-1034/04 NB(SM) dated 7.6.2004. Thus, the matter is before the Tribunal for the second time.

2. Heard both sides elaborately. In terms of remand order of the Tribunal dated 7.6.2004, the original authority accepting the submissions of the present appellants, dropped the proceedings initiated by show cause notice dated 2.7.96 demanding duty of Rs.5,13,847/- and show cause notice dated 2.8.96 demanding duty of Rs.4,44,867/-. The department filed the appeals before the Commissioner (Appeals) challenging disallowance of credit of Rs.73,010/- for the month of January, 1996 and Rs.50975/- for the month of December, 1995 and Commissioner (Appeals) allowed the appeals of the Department.

3. Learned Advocate submits that the credit has been disallowed and demand has been raised in pursuance of order of the Commissioner (Appeals) on the following items:

> " Ferrux, ramming mass, grinding wheel, steel wire rope, transformer oil, hydraulic oil, turn board with impad and garseal, grease, tundak board and clean flo "

4. He also submits that in their own case, earlier Tribunal allowed the credit in respect of items like ramming mass, turn board with impad and garseal refractory bricks and grinding wheels etc. Inadvertently due to

communication gap between the assessee and the advocate, they failed to submit the judgement in their own case before the Tribunal during the first round of litigation and before the original authority in the denovo proceedings. However, they placed the reliance on the decision in their own case along with decisions in other cases before the Commissioner (Appeals). But they failed to specifically draw the attention to the decision in their own case passed by the Tribunal and upheld by the Hon'ble High Court as reported as 2002 (141) ELT 634 (P&H) which was in their favour in respect of some of the above items. However, they have specifically raised these points in the grounds of appeal before the Tribunal for the second time.

5. Though the decision of the Hon'ble High Court dated 4.2.02 was not placed before the Tribunal during the earlier round of litigation when the order was passed on 7.6.04, learned advocate submits that since in their own case the Hon'ble High Court has granted relief in respect of some of the impugned items, in the interest of justice, he seeks remand of the matter to the Commissioner (Appeals) for reconsideration.

6. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals). He submits that the Commissioner (Appeals) has decided the appeals in terms of the directions given by the Tribunal vide order dated 7.6.04.

7. I have carefully considered the submissions from both sides. It is surprising that when Hon'ble High Court of Punjab and Haryana High Court have upheld the order of the Tribunal in the case of the appellants

themselves vide order dated 4.2.2002, the same was not placed before the Tribunal when the matter was disposed of on 7.6.204 remanding the matter to the original authority and also before the adjudicating authority who passed the order on 5.10.07. The same was also specifically not brought to the notice of Commissioner (Appeals) who passed the order on 20.6.08. The appellants have relied upon the several other judgements of Tribunal before the Commissioner (Appeals) but has not highlighted the decision in their own case before the authorities below. Thus, they have not been vigilant enough to rely upon the decision of the Hon'ble High Court in their own case before the authorities below and before the Tribunal when the order was passed by the Tribunal on 7.6.2004. These omissions are serious in nature but the learned advocate submits that the same was due to communication gap between the assessee and the advocate then representing the case at the earlier proceedings and seeks another opportunity.

8. In the interest of justice, and with a view to consider applicability of the decision of the Hon'ble High Court in their own case relating to earlier period, I deem it proper to set aside the order of the Commissioner (Appeals) and remand the matter for fresh consideration. As the matter is remanded, I express no views on the merits of the case. As the matter relates to 1995-96, it is directed that the Commissioner (Appeals) will decide the matter expeditiously after granting reasonable opportunity of hearing to the appellants.

(M. Veeraiyan)
Member(Technical)

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