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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/2603/2008 – SM [BR] Date 15/10/2010

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

To :
M/S AMAZON ALLIANCE,
C-28, INDUSTRIAL ESTATE, BAZPUR ROAD,
KASHIPUR (U.S.NAGAR) UTTRAKHAND.

M/S AMAZON ALLIANCE, Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1113 / 2010 –SM[BR] dated 20.9.2010 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.SAURABH MATHUR, ADVOCATE
   C-15, 16, HARTHALA INDUSTRIAL AREA, KANTH ROAD, MORADABAD (U.P) 244001.
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:01.09.2010

Excise Appeal No.2603 of 2008-SM (BR)

For approval and signature:
Hon'ble Shri Ashok Jindal, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

[Arising out of Order-in-Appeal No.97-CE/MRT-II/2008 dated 27.08.2008 passed by the Commissioner of Central Excise (Appeals), Meerut].

M/s. Amazon Alliance — Appellant

Vs.

CCE-Meerut-II — Respondent

Appearance: Rep. by Shri S.K. Mathur, Consultant on behalf of the appellants.
Rep. by Shri K.P. Singh, SDR on behalf of the respondent/Department.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 1113/2010 SM(BR)/Dated:01.09.2010

Per Ashok Jindal:

The appellant ~~Revenue~~ has challenged the impugned order denying the exemption under Notification No.50/03-CE dated 10.06.2003 and SSI Exemption

2. The facts of the case are that the originally the unit was located at B-4, Industrial Estate, Bazpur Road, Kashipur and were availing the area based exemption under Notification No.50/2003-CE dated 26.04.2004. Later on 29.11.2005, the appellants informed of shifting their unit to C-21, Industrial Estate, Bazpur Road, Kashpur and started production at their new unit from 10.02.2006 and applied for exemption on 30.03.2006. The exemption for the period 10.02.2006 to 29.03.2006 was denied on the ground that the appellants are not entitled to avail exemption as per Notification No.50/2003-CE dated 10.06.2003. The lower authorities denied exemption to the appellants, aggrieved by the said denial ~~and hence~~, the appellant is before me.

3. Ld. Consultant for the appellants submitted that they are availing exemption under Notification No.50/2003 since 2004 and they have shifted their factory within that area, the exemption is available to them. In alternate, he also submitted that the appellant is covered under SSI exemption as their total clearance for the period 2004-2005 was

Rs.86,63,785/- and for the period 2005-2006, it was 52,12,775/-, which were within the SSI exemption limit. He submitted that if their contention of the area based exemption under Notification No.50/2003 is not considered then the exemption under SSI exemption be given to them.

4. Ld. DR reiterated the impugned order. He also submitted that the claim of SSI exemption was not made by the appellant before the Adjudicating Authority and it is only an after-thought.

5. Heard both sides.

6. Considering the submissions made by both the sides, the exemption under Notification No.50/2003 is available to the assessee for a specific location of their factory in that area. In case the assessee shift their factory from that location. ~~Hence,~~ I do agree with the Commissioner (Appeals), who has rightly denied the exemption under Notification No.50/2003-CE. With regard to the second contention of the appellant that they are covered under SSI exemption although they failed to refer this claim before the Adjudicating Authority, but they have raised their claim of SSI exemption before the Commissioner (Appeals) and who denied their claim of SSI exemption only on the ground that these claims were not raised before the Adjudicating Authority. This view of the Commissioner (Appeals) is not acceptable. Hence, the matter needs re-examination and verification by the Original Adjudicating Authority whether the appellants are entitled for SSI exemption or not. Accordingly,

after setting aside the impugned order with regard to denial of exemption under SSI unit, ~~the impugned order is set aside and~~ the matter is remanded back to the Original Adjudicating Authority to verify and examine whether the appellants are entitled for SSI exemption or not after giving reasonable opportunity to the appellants to their present case. With these observations, the appeal is disposed of.

(Ashok Jindal)
Member (Judicial)

Ckp.