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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. ST/1064/2010 – SM[BR] ST / STAY / 2804/ 2010-SM[BR] Date 18/10/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant
Vs
M/S INDUSTRIAL CABLE INDIA LIMITED, Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1118/2010-SM[BR] &S/476/2010 dated 7.10.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S INDUSTRIAL CABLE INDIA LIMITED,
   INDUSTRIAL AREA, RAJPURA, DISTT. PATIALA (PUNJAB)
2. Adv. / Consult
   NONE:-------------

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram,
New Delhi

COURT No. II

ST/STAY APPLICATION NO. 2804/10-SM IN SERVICE TAX APPEAL NO. 1064 OF 2010

(Arising out of Order-in-Appeal No.53/ST/CHD-II/09 dated 9.04.10 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II)

CCE, Chandigarh — Appellant
Reptd. by Shri R.K. Gupta, D.R.

Versus

M/s. Industral Cable India Ltd., — Respondents
None

Date of Hearing/decision: 7th October, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member;

FINAL ORDER NO. 1118/2010 SM (Br) & **DATED**
S-476/2010 SM (Br)

Per D.N. Panda:

Revenue came in appeal against the order passed by the learned Commissioner (Appeals) setting aside the order of the adjudicating authority with consequential relief. Adjudicating authority disallowed claim of refund of Rs. 15,394/- made by the respondents due to settling of dispute under Dispute Resolution Scheme of 2008. According to the order of the authorities below the respondents deposited Rs. 20,195/- vide GAR-7 dated 3.9.2008. The disallowance was made on the ground that there was no formal protest made before the competent authority in the above scenario.

2. Learned Appellate Authority found that there was only procedural irregularities for which refund is admissible.

3. Learned D.R's contention is that when the certificate of settlement is not on record, it is not possible to find whether the respondents are entitled to refund. Therefore, first appellate authority's order suffers from legal infirmity.

4. In the absence of respondents today, who have neither caused presence nor sought any adjournment, the record was looked into to test the submissions of the Revenue. Record clearly shows that although amount involved is very small learned Commissioner (Appeals) has not examined about the amount in dispute whether settled under the scheme through a proper order and the terms thereof. He has only mentioned that the settlement was done by order dated 12.1.2009. Nothing

more is exhibited by the order about the terms of the dispute Resolution.

5. If there was any scheme declared by the Government, it was necessary for the appellate authority to bring the scheme thread bear on the body of the order and the examination should have been done in that light. So also the reason, why the respondents should get refund should have been brought out in clear terms. There may be procedural irregularities which should not stand as a bar for advancement of justice. But order should be speaking without being cryptic.

6. Revenue having been aggrieved by the contention raised in para 2 of its appeal memorandum it would be proper to send the matter back to the learned appellate authority to re-examine the issue in the light of the provisions of scheme and the contentions of the Revenue as raised above.

7. In view of the aforesaid conclusion both the stay application as well as appeal are disposed off remanding the matter back to the learned Commissioner (Appeals) to pass a fresh and reasoned order.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK