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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/ 2356 / 2008 -SM[BR] Date 18/10/2010

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant

Vs

M/S RAIL FAB, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1119 / 2010 -SM[BR] dated 6.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S RAIL FAB,
   SULTANPUR ROAD, KAPURTHALA.
2. Adv. / Consult SHRI SUDHIR MALHOTRA ADV.
   13-R, HUKAM CHAND COLONY , NEAR D.A.V. COLLEGE JALANDHASR.

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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:06.10.2010

Excise Appeal No.2356/08-SM

[Arising out of Order-in-Appeal No. 410/CE/APPL/JAL/2008 dated 26.08.2008 passed by Commissioner (Appeals), Jalandhar].

CCE, Jalandhar ...Appellant

Vs.

M/s.Rail Fab, ... Respondent

Present for the Appellant :Shri.R.K. Gupta, SDR
Present for the Respondent:Shri.Sudhir Malhotra, Advocate

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 1119/2010 SM(Br) **DATED:06.10.2010**

PER: D.N.PANDA

Revenue has come in appeal against Order-in-Appeal No.410/CE/APPL/JAL/2008 dated 26.08.2008. The very same order was subject matter of appeal by assessee in Appeal case No.2097/2008-SM (Br.) for which notice was issued for disposal on 10.11.2008.

2. The learned Counsel Shri.Malhotra submits that while the stay application was disposed in respect of Appeal No.2097/08, the appeal itself was disposed on 15.12.2008 in terms of final order No.1633/08-SM (Br.). The Stay order No.660/2008-SM

(Br.) was also conveyed by same final order. According to Shri Malhotra, when the Bench could appreciate that there was no room left for initiating proceeding against appellant in view of reversal of cenvat credit, the Bench not only allowed the appeal but also appreciated that penalty proceeding was unwarranted. In view of such a position, the appeal of the Revenue is infructuous.

2. Ld. DR appearing for Revenue dos not dispute with the order passed by the Tribunal as above.

3. It is surprising to note that none of the parties could bring to notice of the Bench about pendency of Revenue's appeal when the matter was disposed on 15.12.2008. Appeal was filed by Revenue on 25.11.2008. During pendency of appeal of the Revenue assessee's appeal No.2097/08 was disposed. It has been repeatedly noticed by the Tribunal that there is no mention by either side nor by Registry about pendency of appeal of either side while the appeal of the opposite side is taken up for hearing. It is high time for Registry to exercise proper control for listing of the appeal of both sides so that there shall not be conflict in the decision while appeal of one side is taken up, depriving the other side to pursue its remedy. It is needless to mention that the High Courts have already repeatedly reminded that appeals cannot be disposed in peace-meal. It is also hereby informed to the Bar that the Bar should circulate to its Members to bring to the notice of the Bench when they get notice, about appeal, if any, filed by

and vice versa.
Revenue relating to their appeals Ld. CDR is also kept informed by this order that effective control should be exercised at the end of Revenue to bring to the light of the Bench about pendency of Revenue's appeal, if any, while assessee's appeal is taken up. Registry should not loose sight of clubbing of the appeals through effective control measure, so that there shall not be repetitive observations, like this, in future.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita