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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

Appeal No. E/4987/2004 - EX[DB]

Date 31/03/2010

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

To :
M/S INDIAN OIL CORPORATION LTD.
VILL-BAHOLI PANIPAT, HARYANA
M/S INDIAN OIL CORPORATION LTD.

C.C.E.ROHTAK

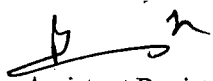
Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 124/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2010 EX[DB] dated 22-3-10


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E.ROHTAK

P-17, SECTOR-1, ROHTAK

2. Adv. / Consult

MS. REENA KHAIR, ADV,

R-163, 1ST FLOOR

G. K. PART-1, N. DELHI-48

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 Publications 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

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18. HON'BLE PRESIDENT


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

PRINCIPAL BENCH - COURT NO. I

Date of Hearing: 27.01.2010

Date of Decision: 22/3/2010

Excise Appeal No. E/4987/04

[Arising out of Order-in-Original No.9/COMM/KKG/2004 dated 14.7.2004 passed by the Commissioner of Central Excise, Rohtak].

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	

M/s. Indian Oil Corporation Ltd.

...Appellant

Vs.

CCE, Rohtak

... Respondent

Present for the Appellant : Ms. Reena Khair, Advocate

Present for the Respondent : Shri K.P. Singh, SDR

**Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)**

FINAL ORDER NO. 124 / 10-EX DATED: 22/3/2010

PER: RAKESH KUMAR

The point to be decided in this appeal is as to whether the appellants are liable to pay central excise duty on storage tanks and pre-fabricated steel structures (canopy) got manufactured by them through job workers for supply to their

retail outlets. The storage tanks and prefabricated steel structures had been manufactured by the job workers out of the MS plates supplied by the appellants. The Department, being of the view that it is the appellants who are liable to pay duty in respect of these steel structures, issued a show cause notice dated 9.6.2003 for demand of Central Excise duty amounting to Rs.87,53,478/- in respect of storage tanks and steel structures got manufactured by the appellant through job workers and supplied to the appellants' retail outlets during the period from June, 1998 to March, 2003. The Show-cause-notice was issued by invoking longer limitation period under proviso to section 11A(1) of Central Excise Act 1944 and besides the duty, also demanded interest on duty under section 11AB of Central Excise Act 1944 and proposed imposition of penalty under Rule 25 (2) of Central Excise Rules 2001/2002/ Rule 173 Q (1) of Central Excise Act 1944, read with section 11AC of Central Excise Act, 1944. The show cause notice was adjudicated by the Commissioner vide Order-in-Original No.9/COMMR/KKG/04 dated 14.08.2004 by which the duty demand of Rs.40,61,071/- was confirmed against the appellant alongwith interest on it at the applicable rate as per the provisions of section 11AB of Central Excise Act and besides this, penalty of equal amount was imposed under the provisions of Rule 173 Q (1) of Central Excise Rules 1944 read with section 11AC of Central Excise Act, 1944. The Commissioner in its order held that in respect of the storage tank and steel structures got manufactured by the appellant through job workers, it is the appellant who have to be treated as manufacturer and would be liable to pay the central excise

duty. It is against this order of the Commissioner that the present appeal has been filed.

2. Heard both sides.

3. Ms. Reena Khair, Advocate, the Id. Counsel for the appellant, pleaded that the goods had been manufactured by the job workers out of the raw-material supplied by the appellant, that it is not the allegation of the Department that the transactions between the appellant and the job workers are not on principle to principle basis, that in view of this position, it is the job workers who have to be treated as the manufacturer and it is the job workers who would be liable to pay the duty, that the Tribunal in the case of Hindustan Petroleum Corpn. Ltd. Vs. CCE, Bhopal reported in 2004 (174) ELT 31 has held that in respect of steel storage tank got manufactured by M/s. HPCL through job workers out of the raw-material and design and specifications provided by them, it is the job workers who would be liable to pay the duty and the duty, if any, payable would be by the job workers, that same view was taken by the Tribunal in the case of M/s. Mechanical Constructors vs. CCE, Bhopal (Final Order No. 649/09/Ex. dated 5.8.09) wherein the Tribunal held that M/s. Mechanical Constructors who had manufactured storage tanks for M/s. IOC on job work basis out of the material supplied by IOC would be treated as manufacturers and would be liable to pay the duty and that in view of settled legal position on this issue the impugned order demanding duty from the appellant is not correct.

4. Shri K.P. Singh, the Id. DR, reiterating the Commissioner's findings in the impugned order, pleaded that since the goods had been manufactured out of raw-material supplied by the appellant and as per the design and specifications provided by the appellant and under their supervision, it is the appellant who have to be treated as the manufacturers. He relied upon the Tribunal's judgment in the case of Superintending Engineer vs. Collector of Central Excise reported in 1992 (59) ELT 610 wherein the Tribunal held that in respect of cement product such as slabs, half round channels, Trapezoidal sections and PCC channels for use in the canal of irrigation project, which were manufactured by the contractor carrying out the work on payment of labour charges on behalf of Irrigation Department it is the Irrigation Department which has to be cannot be treated as the manufacturer.

5. We have carefully considered the submissions from both the sides and perused the records. The storage tanks and other steel structures are fabricated by the contractors on job work basis out the raw-material and designs and specifications supplied by the appellant. It is not the allegation of the Department that the transactions between the appellant and the job workers are not on principal to principal basis. The Tribunal in the case of Kerala State Electricity Board vs. CCE, reported in 1990 (47) ELT 62 has held that in respect of PCC Poles got manufactured by Kerala State Electricity Board through contractors on job work basis out of raw-material and

specifications provided by the Electricity Board, it is the contractors who would be liable to pay the duty and not the Kerala Electricity Board. This judgment of the Tribunal has been affirmed by the Hon'ble Supreme Court vide judgment reported in 1990 (47) ELT A 161. We find that the same view had been taken by the Tribunal in the case of HPCL vs. CCE, Bhopal (supra) and Mechanical Constructors vs. CCE, Bhopal (supra). Hon'ble Gujarat High Court in the case of Prolite Engineering Co. vs. Union of India reported in 1995 (75) ELT 257 has held that the job worker converting the customer's imported CRGO steel sheets into electrical lamination by the processes of slitting and cutting on payment of job charges with their own machinery, labour and capital and without any management control or financial involvement of customer and when the relationship between the two is on principal to principal basis, it is the job worker who is the manufacturer and not the customer. In the case of Superintending Engineer vs. Collector of Central Excise reported in 1992 (59) ELT 610 cited by the Id. DR, there is a specific finding of the Tribunal in para 27 of the order that on careful examination of the tender documents it could not be said that the manufacturing activity in the cement yards for production of goods had been done on principal to principal basis and that the terms of the agreement and the ratio of the Tribunal's judgment in the case of Kerala State Electricity Board (supra) is not directly applicable to the facts of this case. Since in this case it is neither the Department's allegation that the transactions between the appellant and the job workers were not on principal to principal basis nor any evidence in this regard has

been produced, in view of the settled legal position on this issue, it is the job workers who have to be treated as the manufacturer and not the appellant and the appellants were not liable to pay the duty. The impugned order, therefore, is not sustainable. The same is set aside. The appeal is allowed.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita