

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/556 /2006 - EX[DB]

Date 15/04/2010

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

To :
BEC STRIPS LIMITED.BHILAI
67 LIGHT INDUSTRIAL AREA BHILAI DISTT. DURG.
BEC STRIPS LIMITED.BHILAI

C.C.E. RAIPUR

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 188/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2010 EX[DB] dated 15-4-10


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

NONE

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 ~~COMPANY LAW INSTITUTE OF INDIA (P) LTD, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17~~

~~9 Raghuraman's 44-B, Regal Flat, Shri Ram Suncity, Indrapuram - 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 K-mr, New Delhi - 110070~~

13 Taxmann Allied Service Pvt Ltd., 59/32, NEW ROHTAK ROAD, N. DELHI - 5

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

17 Guard file


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI**

COURT NO. II

CENTRAL EXCISE APPEAL NO. 556 OF 2006

[Arising out of Order-in-Appeal No. 59-60/RPR-II/2005 dated 27.10.2005 passed by the Commissioner (Appeals-II), Customs & Central Excise, Raipur]

Dated of hearing/decision: 6th April, 2010

For approval and signature:

Hon'ble Mr. D.N. Panda, Judicial Member;
Hon'ble Mr. S.K. Gaule, Technical Member

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 would 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. BEC Strips Limited

Appellant

Vs.

CCE, Raipur

Respondent

Appearance:

None for the appellants;
Shri Mahesh Rastogi & Shri Vijay Kumar,
Authorised Representative (DR) for the Revenue

Coram:

Hon'ble Mr. D.N. Panda, Judicial Member;
Hon'ble Mr. S.K. Gaule, Technical Member

FINAL **ORAL ORDER NO. 188/10-EX** dated _____

Per D.N. PANDA:

The appellant is not present today despite several notices. There is an application to grant further opportunity to the appellant for hearing.

2. Revenue's submission is that the present appellant has not become successful before the learned first appellate authority. It was a job worker for the M/s. Bhilai Engg. Corporation Ltd. and did not discharge the duty liability in respect of the goods job worked nor furnished the declaration required under notification No. 214/86-Ce dated 25.3.1986 for which the adjudication was confirmed raising duty demand as well as penalty and interest. Against such adjudication the appellant went in appeal before the learned Commissioner (Appeals) who set aside the penalty imposed on the appellant but confirmed the demand of duty for which the Appellant is before the Tribunal. While waiving the penalty the learned Commissioner (Appeals) has come to the conclusion that there was no evidence to prove evasion.

3. Heard Revenue and also perused the record.

4. While confirming the adjudication order, learned Commissioner (Appeals) has observed that there was no evidence to penalize the appellant under Section 11AC of the Central Excise Act, 1944 for which he set aside the penalty. This clearly shows that the conduct of the

appellant is not mischievous. Therefore, we are surprised how provision of Section 11AC of the Central Excise Act, 1944 was invoked.

5. Having noticed that there was allegation of furnishing of non-declaration, we examined to find ^{out} whether Revenue was prejudiced. Record does not show as to whether records of Bhilai Engg. Corporation Ltd. was examined who were appellant No. 2 before the learned Commissioner (Appeals) so as to satisfy whether the job worked goods sent by the present appellant were recorded by Bhilai Engg. Corpn. Ltd. and whether the goods manufactured using job worked goods had suffered duty in the hands of Bhilai Engg. Corpn. Ltd. In view of no evidence on all these aspects available on record it became necessary to examine whether the declaration is decisive for the purpose of grant of exemption to the job worker. When the notification in question is read it reveals that in terms of para 2 thereof an obligation was casted on the raw material supplier to give undertaking as to the satisfaction of the requirement of the notification. When that is the intention of the notification the appellant should not suffer and cannot be asked to furnish the declaration. The notification also does not show by any mean as to whether prior declaration is necessary. However, the language ^{employed} in the notification shows that declaration was all along necessary before the final goods move to the owner of the raw material from job worker. Having noticed various features of the notification as above it is not proper to confirm the first appellate order which has not examined

various aspects of the notification nor also looked into the aspect as to whose obligation was to discharge the duty liability and having not examined any evidence to find suffering of duty by Bhilai Engg. Corpn. Ltd., it has become necessary to send the matter back to the learned adjudicating authority to check up the records of Bhilai Engg. Corpn. Ltd. Upon examination, if he is satisfied that the goods manufactured by the present job worker appellant has ultimately reached to the owner of the raw material i.e. Bhilai Engg. Corpn. Ltd. and that has suffered duty upon being used in manufacture of final product, the present appellant should not suffer duty liability in view of bonafide established by the Appellant as apparent from the first appellate order. Therefore, we do not touch the finding of bonafide made by the first appellate authority but we remand the matter on limited aspect of technicality of declaration. Learned Adjudicating Authority should satisfy the requirement of fulfilment of notification.

4. While the matter was heard and aforesaid view was taken by the Bench, assistance was provided by Shri O.P. Agarwal, Chartered Accountant, Shri Bipin Garg, Advocate and Shri Hemant Bajaj, Advocate to go through the judgment of the Hon'ble Supreme Court in the case of M. Tex and D.K. Processors Ltd. vs. CCE, as reported in 2002 (140) ELT A89 (S.C.). These Amicus Curie submitted that Revenue went to Apex Court against the order passed by the Tribunal in the case reported in 2001 (136) ELT 73 (Tri. – Del.). But that was dismissed by the Apex

Court. Consequently, the decision of the Tribunal holding that job worker who received the inputs from principal manufacturer under challan issued under Rule 57^F(4) and returned the said goods after carrying out the process shall not be liable to pay duty on the goods job worked.

5. Once the aforesaid position of law has settled the issue of like nature, we direct the learned adjudicating authority to take such law into consideration and, for satisfaction of Revenue, should verify the records of Bhilai Engg. Corpn. Ltd. as to the effect whether duty has ultimately been discharged on the final products emerged from the job worked goods. In the result, we make the limited remand to the extent indicated above^{to} the learned Adjudicating Authority upholding set aside of penalty by the first appellate order.

(D.N. PANDA)
JUDICIAL MEMBER

(S.K. GAULE)
TECHNICAL MEMBER

RK