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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/2214/2005-2217/2005 - EX[DB]   Date **28/12/2010**

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S RPG TRANSMISSION LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 870-873/2010 **EX[DB]** dated 21-12-10 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S RPG TRANSMISSION LTD
DEORI, PANAGAR, JABALPUR,
(M.P.)
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT
16. SHRI U.K.NAG
M/S RPG TRANSMISSION LTD,
DEORI,PANAGAR,JABALPUR-MP
17. SHRI PAWAN VARMA,MANAGER
M/S. RPG TRANSMISSION LTD,
DEORI PANAGAR, JABALPUR-MP
18. SHRI RAJIV GUPTA- GM
M/S. RPG TRANSMISSION LTD,
DEORI,PANGAGAR,JABALPUR-MP

Assistant Registrar
(Excise Appeal Branch)

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

Central Excise Appeal No.2214 of 2005

(Arising out of Order-in-Appeal No.811-814-CE/BPL/2004 dated 7.1.2005 passed by the Commissioner of Central Excise &Customs (Appeals-II), Bhopal)

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?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Bhopal — Appellants

Vs.

M/s. R.P.G.Transmission Ltd. — Respondents

And

Central Excise Appeal No.2215 of 2005

CCE, Bhopal — Appellants

Vs.

Shri Pawan Varma, Manager — Respondents

And

Central Excise Appeal No.2216 of 2005

CCE, Bhopal — Appellants

Vs.

Shri Rajiv Gupta, GM — Respondents

And

Central Excise Appeal No.2217 of 2005

CCE, Bhopal — Appellants

Vs.

Shri U.K.Nag, Authorised Representative — Respondents

Present for the Appellant: Shri V.K.Chaudhary, SDR

Present for the Respondent: Shri B.L.Narsimhan, Advocate

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

Date of Hearing/Decision: 21.12.2010

FINAL **ORAL ORDER NO.** 870-873/10-EX

PER: JUSTICE R.M.S. KHANDEPARKAR

Since a common question of law and facts arise in these matters, they were heard together and are being disposed of by this common order, apart from the fact that all the four appeals arise from common impugned order dated 7.1.2005 passed by the Commissioner of Central Excise (Appeals), Bhopal.

2. Though the challenge to the impugned order is on the various grounds, it is not necessary to deal all those grounds and suffice to refer only one ground which would justify interference in the impugned order by this Tribunal.

3. The adjudicating authority by its order dated 31.8.2004 had confirmed the demand of Rs.22,48,590/- alongwith equal amount of penalty, besides other penalties against the authorised representative, Manager and General Manager of the firm and demand of interest. The Commissioner(Appeals) in the appeals filed by the four aggrieved parties allowed the appeals on sole ground that the department was not entitled to invoke the extended period of limitation and, therefore, quashed the proceedings and the demand.

4. It is the grievance of the department that the Commissioner (Appeals) could not have held that the department was not entitled to invoke the extended period of limitation, unless it had first addressed to the main issue relating to the duty liability. It is the contention on b[illegible] of the department that the question to deal with[illegible]

limitation can arise only after the authority finds that there was default in the payment of duty and had not taken any action by the department, even though it was within the knowledge of the department or there was suppression of facts by the assessee and, therefore, the extended period of limitation could be invoked.

5. Though the contention sought to be raised in this regard by the department is objected to by the learned Advocate for the respondents, the fact remains that in order to arrive at the correct finding in relation to right of the department to invoke the extended period of limitation in terms of proviso to Section 11A of the Central Excise Act, 1944, it is necessary for the concerned authority to ascertain primarily whether there was any default on the part of the assessee which would warrant proceedings under the Act against the assessee. The question of ascertaining whether there was delay or not on the part of the department in initiating the proceedings can arise only after the authority finds that there was default on the part of the assessee in complying with the obligation by the assessee under the Act and the same warranted the necessary proceedings against the assessee under the Act. Only after having ascertained the same, the question of deciding the issue as to whether there was any lethargy or delay on the part of the department in initiating necessary proceedings against the assessee can arise.

6. Perusal of the impugned order apparently discloses that the Commissioner (Appeals) without ascertaining as to whether there was any default on the part of the assessee which would warrant the proceedings against the respondents proceeded to disposed of the appeals by observing that issuance of certain show cause notices in relation to certain other matters to the assessee discloses knowledge of default by the assessee to the department. In other words, the Commissioner(Appeals) without ascertaining as to whether there was

default or not, inspite of the fact that the same was necessary to be ascertained as the appeals were filed by the respondents against the order passed by the adjudicating authority already holding that the assessee had committed default and on that count had confirmed the demand of duty on that ground and the same was under challenge before him, proceeded to dispose of the appeals merely by holding that the department was not justified in invoking the extended period of limitation. Even otherwise it is settled law that first appellate authority has always to decide the appeal by addressing to all the issues raised in a matter. There is no option for the first appellate authority to find out some short-cut methods to dispose of the appeals. Once an issue arises for consideration, the first appellate authority has to decide such issue.

7. Bearing in mind the law as above, we find that the impugned order cannot be sustained and is liable to be set aside and, therefore, matter needs to be remanded to the Commissioner (Appeals) to decide the same afresh after taking into consideration all the issues raised in the matter including the issue relating to bar of limitation.

8. For the reasons stated above, the appeals are allowed, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide all the issues afresh in accordance with the provisions of law.

(Pronounced in the open court)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMEBR (TECHNICAL)

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