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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Date 17/01/2011

Appeal No. C/518 /2010, C/S/2856/2010, 527 /2010 - CU[DB], C/S/2896/2010

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

To :
M/S PARMARTH STEEL & ALLOYS PVT. LTD.
7TH K.M. STONE, NAGINA ROAD,
BIJNORE-246701 (U.P.)

M/S PARMARTH STEEL & ALLOYS PVT. LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

STAY ORDER NO.C/2-3/2011

I am directed to transmit herewith a certified copy of **Final order** C/15-16/ **2011 CU[DB]** dated 12.01.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW
DELHI 110020.
2. Adv. / Consult
MR.V V GAUTAM ADVOCATE & CONSULTANT
M/S. TAX INTEL ADVOCATES & CONSULTANTS,
A-15, SOUTH EXTN. PART-II, NEW DELHI.
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 -
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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing/decision: 10.1.2011

Stay Application No.2856 of 2010 and Customs Appeal No.518 of 2010

Arising out of the order in appeal No.CC(A)CUS/ICD/61/10 dated 6.7.2010 passed by the Commissioner, Customs (Appeals), New Delhi.

Stay Application No.2896 of 2010 and Customs Appeal No.527 of 2010

Arising out of the order in appeal No.CC(A)CUS/ICD/61/10 dated 6.7.2010 passed by the Commissioner, Customs (Appeals), New Delhi.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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

M/s Parmarth Steels and Alloys Pvt. Ltd. ... Applicant/appellant

Vs.

C.C., (ICD), New Delhi .... Respondent

C.C., (ICD, New Delhi ... Applicant/appellant

Vs.

M/s Parmarth Steels and Alloys Pvt. Ltd. .... Respondent

Appearance:

Shri Abhishek Pareek, Advocate for the applicants/appellants
Shri Krishna Pratap Singh, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

Final Oral Order No. C/15-16/11
Stay order No. C/2-3/11

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty of Rs.6,38,035.26, we proceed to decide the appeals themselves inasmuch as the issue lies in a narrow campus.

2. As far as facts on record, the assessee is engaged in the manufacture of iron and steel ingots. Four consignments of melting scrap of iron an steel were imported by the appellants at concessional rate of duty under Serial No.200 of the Notification No.21/2002-Cus dated 1.3.2002.The condition attached to the said notification requires production of end-use certificate from the Assistant Commissioner within a period of six months, which period can be further extended by the Deputy/Assistant Commissioner.

3. Inasmuch as the end-use certificates were not produced by the assessees within a period of six months, proceedings were initiated against them for denial of the benefit of the said Notification. The said ~~provision~~ notice resulted in passing of the order by the Assistant Commissioner of Customs confirming the duty of Rs.38,82,513/- along with confirmation of interest.

4. On appeal against the above order, Commissioner (Appeals) observed that the benefit of Notification cannot be denied on the ground of non-submission of end-use certificates within a period of six months, when there is no denial of the fact that the assessees had never eventually produced the end-use certificate issued by the proper officer. He accordingly held that the assessees have complied with the condition of the Notification No.21/2002-Cus and there is no case of mis-utilisation of melting scrap of iron and steel.

5. However, he further observed that in some of the cases, end-use certificates produced by the assessees do not cover the entire quantities imported by them. Accordingly, he confirmed the demand of duty of Rs.6,38,035.26 on the above ground.

6. The assesee's grievance is that the above issue was not the subject matter of show cause notice, while the Commissioner (Appeals) before confirming the duty on the above ground has not given any opportunity to clarify the issue.

7. Inasmuch as the appellate authority held in favour of the assessees on the legal issue but has confirmed part of the demand on the factual aspect, we are of the view that such factual aspect should be verified by the original adjudicating authority and the assessees can be given an opportunity to contest the same. Accordingly, we set aside the impugned order and remand the matter to the original adjudicating authority for verification of the fact of production/no-production of end-use certificates in respect of the disputed quantity.

8. Appeals and stay petitions are disposed of in above terms.

(Archana Wadhwa)
Judicial Member

(M. Veeraiyan)
Technical Member

scd/