TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/3708/2005 - EX[DB] Date **21/02/2011**

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

To :
M/S ESCORTS LTD.
15/5,MATHURA ROAD, FARIDABAD

M/S ESCORTS LTD. Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 193/ 2011 EX[DB]** dated 03-2-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.
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.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 3708 /2005-Ex(BR)

[Arising out of Order-in-Original No. 24/RH/Adj./2005-06 dated 31.8.2005 passed by Commissioner of Central Excise, Faridabad]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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

---

M/s. Escorts Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Delhi IV

Appearance:

Shri V. Lakshmi Kumaran , Shri A.R. M. Rao and Shri R.K. Hasija, Advocates for the Appellants
Shri S.R. Meena, DR for the Respondent

CORAM:

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

Date of Hearing/decision : 3.2.2011

Final **ORAL ORDER NO. 193/2011-EV**

Per Shri Justice R.M.S. Khandeparkar:

Heard the Counsel for the appellants and DR for the respondent. Present appeal arises from order dated 31.8.05 passed by the Commissioner, Faridabad. By the impugned order the Commissioner has held that for the period from January, 1996 to August, 1996, the excise duty amount of Rs.2,43,37,186/- on 3139 numbers of transmission assemblies captively used in the manufacture of exempted tractors, as confirmed by the Tribunal in Final order dated 27.5.2004, is recoverable from the assessee and modvat credit of Rs.1,71,55,294/- pertaining to the inputs used in the transmission assembly captively used in the manufacture of exempted tractors which is already reversed by the appellants was available to them. It has been further held that for the period September, 1996 to May, 1998, the appellants are liable to pay Central Excise duty amounting to Rs.7,22,64,905/- on 8501 numbers of transmission assemblies captively used in the manufacture of exempted tractors as confirmed by the Tribunal in the order dated 27.5.2004 and modvat credit of the duty was not available to them on the ground of non fulfilment of the procedure prescribed under Rule 57 CC of the Central Excise Rules, besides ordering payment of interest and imposition of penalty of Rs.9,66,02,091/-.

2. The impugned order is sought to be challenged on various grounds including the ground that the Commissioner could not have decided the matter on remand ignoring the rectification order passed by the Tribunal on 7.1.05 in relation to the order dated 27.5.04 merely on

the ground that the reference at the instance of the department was pending before the High Court in relation to some other order even though it may relate to similar issue and in party's own case.

3. The DR on the other hand, tried to justify the impugned order while contending that in view of pendency of the issue before the High Court in the party's own case, no fault could be found with the impugned order which is essentially on the basis of another decision of the Tribunal in the matter of Eicher Tractors vs. CCE, New Delhi reported in [2000 (116) ELT 712].

4. Undisputedly the order dated 27.5.04 passed by the Tribunal in Appeal No. E/24, 25 and 26/2003 was rectified whereby the finding in the order dated 27.5.04 to the effect that "they cannot take the credit of the duty paid on the impugned transmission assemblies as these have been used in the manufacture of tractors which are exempted from payment of duty" was corrected to be read as " they are eligible to take credit of duty paid on the impugned transaction assemblies whether used in the manufacture of dutiable tractors or tractors exempted from payment of duty subject to fulfilment of the procedure prescribed in Rule 57CC of the Central Excise Rules, 1944."

5. The impugned order discloses a clear observation by the Commissioner that the Tribunal had held that the appellants were eligible to take that credit of the duty paid on the impugned transmission assembly whether used in the manufacture of dutiable tractors or tractors exempted from duty; that the impugned order further records that there is reference application filed by the department before the Punjab and

Haryana High Court and the issue is pending before the High Court and thereafter by referring to the decision of the Tribunal in Eicher Tractors, the Commissioner has held that the appellants are not entitled to modvat credit of the duty liability on the transmission assemblies exclusively used in tractor model No. 430 as well as model 325.

6. Apparently, the decision by the Commissioner is contrary to the findings arrived at by the Tribunal on the issue of availment of modvat credit for the relevant period. Merely because the issue was pending before the High Court and for that matter before any other higher Court even in some other matter of the same party, that cannot be a justification for the lower authority to ignore specific finding on the issue in the case before the concerned authority pursuant to remand order. The authority dealing with the order on remand is always bound by the remand order. The jurisdiction of such authority always depends upon the terms of the remand order.

7. In this regard as rightly pointed out by the learned Counsel for the appellants, the decision of the Apex Court in the matter of Union of India vs. Kamlakshi Finance Corporation Ltd. reported in 1991 (55) ELT 433 is worth reproducing. In para 7 of the said decision, it was held thus:

> "7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes

across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

8. Considering the facts of the case and the ruling of the Apex Court, the impugned order is clearly not sustainable and liable to be set aside while expressing our displeasure for the Commissioner having acted contrary to the order of the Tribunal.

9. It is also to be noted that as rightly pointed out by the learned advocate for the appellants the Hon'ble High Court has also rejected the reference under order dated 30.3.10 reported in 2010 TIOL 378-HC-P&H-CX.

10. Learned Advocate for the appellants is also justified in making grievance about non-consideration of the certain material available on record and which could support the case of the appellants and which was collected by the Department itself. If that is the case, certainly it is unfair on the part of the Commissioner to ignore the same and not to furnish copies thereof to the appellants before deciding the matter. It has been informed that the appellants have already obtained copies thereof while exercising their right under Right To Information Act. In the circumstances, while deciding the matter afresh it would be appropriate for the Commissioner to take into consideration all the materials to be placed on record and therefore liberty to the parties to place on record any such further evidence which they may desire to place on record provided that it is relevant for the decision.

11. In the result therefore ~~thereof~~, the appeal succeeds. The impugned order is set aside and matter is remanded to the Commissioner to decide the same afresh in accordance with the provisions of law and taking into consideration the decision of the Tribunal dated 25.1.05 as well as of the

Hon'ble High Court in the reference matter and the evidence to be placed on record by the parties.

12. The appeal is accordingly disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

ss