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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/221 /2008 - EX[DB] Date **24/02/2011**

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

To :
TATA CONSTRUCTION &PROJECT LIMITED
SH RANJIT CHOWDHURY, OLD POST OFFICE
STREET, GROUND FLOOR, KOLKATA.
700001

TATA CONSTRUCTION &PROJECT LIMITED Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 235/ 2011 EX|DB|** dated 15-2-11 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult SH. S.K. BAGARIA, SR. ADV. C/o
MR.GLOBAL LEGAL ASSOCIATES
JEEVAN VIHAR,IST FLOOR(REAR
ESTATE)3,SANSAD MARG, N 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 - 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)

7

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

Excise Appeal No. 221 /2008-Ex(BR)

[Arising out of Order-in-Appeal No. 11/ CE/JPR-II/2003-Commr dated 29.4.2003 passed by Commissioner (Appeals II) Central Excise, Jaipur]

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? : Ys
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. Tata Construction & Projects Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur — Respondent

Appearance:
Shri S.K. Bagaria, Sr.Advocate for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:

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

Date of Hearing/decision : 15.2.2011

FINAL **ORAL ORDER No.** 235/2011-EX

<u>Per Shri Justice R.M.S. Khandeparkar</u> (for the Bench):

Heard the learned counsel for the appellants and Jt. CDR for the respondents. This matter was heard pursuant to the directions issued by the Apex Court in its order dated 13.12.10 in SLP No. 5989/08.

2. The appeal arises from order dated 07.05.2003 passed by the Commissioner, Jaipur. By the impugned order the demand to the tune of Rs.1,00,97,626/- has been confirmed along with imposition of penalty of Rs.50,00,000/- and confiscation of the goods manufactured by the appellants and used in the erection of the plants with an option to redeem the same on payment of fine of Rs.50,000/-.

3. Infact the impugned order came to be passed pursuant to the remand of the order by the Tribunal for the second time. Initially pursuant to the issue of show cause notice dated 13.10.95 and the matter being contested by the appellants, the Commissioner had disposed of the matter under order dated 22.1.98. Infact by the said order, the Commissioner had confirmed the demand of duty to the tune of Rs.1,00,97,626/- along with penalty of Rs.50 lakh. Being dissatisfied, the appellants preferred appeal before the Tribunal and the same was disposed of by order dated 15.7.98. The Tribunal while disposing the appeal, set aside the order of the Commissioner and remanded the matter for fresh decision to the adjudicating authority. It was specifically observed by the Tribunal that the adjudication order did not indicated item-wise classification. Thereafter the Commissioner by its order dated 26.3.1999 disposed of the adjudication

proceedings again confirming same demand and imposing penalty of Rs.50 lakhs.

4. Being aggrieved by the said order the appellants preferred the appeal before the Tribunal which came to be disposed of by order dated 12.2.2002. The Tribunal again set aside the order passed by the Commissioner and remanded the matter for denovo proceedings and for passing appropriate order after giving reasonable opportunity of being heard to the parties. While remanding the matter, it was specifically observed that the Commissioner in the order under challenge before the Tribunal in the said appeal had merely reproduced some of the findings verbatim as were arrived at in the earlier order dated 15.7.98 and thereby had completely lost the sight of the fact that since the findings arrived at earlier were found inadequate and deficient, the same were set aside and the matter was remanded for passing fresh order. It was further observed that there were directions by the Tribunal to examine the duty liability in respect of each of the items in question, along with the classification of the products. It was specifically stated in the order that items are to be considered with reference to their code numbers and the description as per the schedule to the Tariff Act. It was reminded to the Commissioner that the classification can not be completed on the basis of sketchy information. With these observations, the matter was remanded for the second time for de novo order with further directions that the order should be a speaking order besides complying with the directions of the Tribunal.

5. Pursuant to the said remand order the matter came to be disposed of by the impugned order. Apart from various other grievances sought to be made in relation to the impugned order, learned advocate for the appellants submitted that the Commissioner has virtually repeated the same mistake which was committed on earlier two occasions inspite of specific defects having been pointed out by the Tribunal in the earlier order. Our attention was also drawn to para 18 of the impugned order while contending that ignoring the fact that earlier orders by the Commissioner ~~was~~ were no more subsisting, the Commissioner refused to deal with the issue on limitation specifically raised by the appellants on assumption that the same was already dealt with and decided in the earlier order. He further submitted that the authority did not consider the matter item-wise and to that extent, there was clear violation of the directions issued by the Tribunal in the remand order.

6. The Jt. CDR appearing for the appellants fairly submitted that the order under challenge did not refer to specific items.

7. As already observed above, it cannot be disputed that on both the occasions the Tribunal under order dated 15.7.98 and order dated 12.2.2002 had specifically directed the adjudicating authority to decide the issue of classification item-wise after taking into consideration the description and function of each of those items and with reference to their classification in terms of tariff code and bearing in mind the provisions of law applicable to each of those items. Perusal of the impugned order nowhere disclose any exercise having been done in this regard by the Commissioner.

8. Mere enlisting the commercial or technical names of the items and specifying the use thereof that itself is not sufficient to decide the issue of classification of the items. Similarly, while deciding the duty liability, it is also necessary to ascertain the classification of each item under sub heading in terms of the schedule to the Tariff Act and thereafter to proceed to quantify the duty liability.

9. It is really surprising that inspite of specific directions in this regard on two earlier occasions in the same matter, the Commissioner has chosen to ignore the same and to proceed to decide the matter contrary to those directions. We are totally unhappy about the approach of the Commissioner in the above matter.

10. It is also to be noted that in order to enable the authority to finalise the classification of the items in question and to ascertain the duty liability, it is also necessary for the appellants to render necessary assistance to give the detailed description of each of the items along with the use and function thereof. Certainly details about the description, use and function of each of the items are essentially within the knowledge of the appellants. It would be appropriate for the appellants to furnish the details in this regard to the Commissioner at the earliest. Further, at the same time we have to observe that it is also the duty of the adjudicating authority to get necessary details from the parties before finalising the issues in question. There are sufficient number of provisions in the statute which empowers the authority to take appropriate steps to get the same on record if it is necessary.

11. It is also to be pointed out that pursuant to setting aside of the earlier orders, the same do not survive and it is not open to the Commissioner to presume that the issue regarding limitation or any other issue stands concluded. All the issues are open for consideration and in fact need to be decided afresh.

12. Without expressing any opinion on any of the points sought to be raised in relation to the merits of the case, we therefore, allow the appeal and set aside the impugned order and remand the matter for fresh decision in accordance with the provisions of law. We repeat that all issues are kept open to be decided by the Commissioner. Taking into consideration the show cause notice relates to the period October, 1995, we expect the Commissioner to expedite the hearing of the matter and to dispose of the same in any case on or before 31.12.11.

14. Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

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