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**

Date **04/05/2011**

Appeal No. E/2678/2005 - EX[DB]

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

To :
M/S PUNJAB STEELS
SUA ROAD DHANHARI KALAN LUDHIANA — Appellant

Vs

**M/S PUNJAB STEELS**

**C.C.E. LUDHIANA** — Respondent

I am directed to transmit herewith a certified copy of **Final order No.376/ 2011 EX[DB]** dated 06-4-11 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. LUDHIANA**
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
**MR.BALBIR SINGH**
MASTAN & CO,C-5/9, S.J. DEVELOPMENT AREA, OPP. ITI GATE,SAFDARJUNG ENCLAVE,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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8,Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Regist
(Excise Appeal Bran

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING : 06/04/2011.**
**DATE OF DECISION : 06/04/2011.**

**Excise Appeal No. 2678 of 2005**

[Arising out of the Order-in-Appeal No. 252-CE/Appeal/Ldh/2005 dated 16/05/2005 passed by The Commissioner (Appeals), Central Excise Commissionerate, Ludhiana.]

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 would 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 Department Authorities? | : Y |

M/s Punjab Steels — Appellants

Versus

CCE, Ludhiana — Respondent

**Appearance**

Shri Rupendra Singh, Advocate – for the Appellants.

Shri S.R. Meena, Authorized Representative (DR) – for the Respondent.

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

FINAL Order No. 376/2011-EX. Dated : ____________

**Per. Shri Justice R.M.S. Khandeparkar :-**

Heard the advocate for the appellants and DR for the respondent. This appeal arises from order dated 16th May 2005 passed by Commissioner (Appeals), Ludhiana. By the impugned order the Commissioner (Appeals) set aside the order of the adjudicating authority whereby the proceedings sought to be initiated against the appellants by issuing show cause notice dated 4th July 2003 were dropped.

2. The appellants are engaged in manufacture of Bright Wire of Steel and Thresher Shaft classifiable under Chapter 72 and 84 respectively of the schedule to the Central Excise Tariff Act, 1985.

3. During the scrutiny of ER-1 returns for the period from April 2002 to March 2003 it was observed by the department that the appellants had been clearing Thresher Shaft without payment of duty by classifying the product under sub-heading No. 8433.00 by reversing an amount @ 8% of the sale value in terms of Rule 6 (b) of the Cenvat Credit Rules, 2002. According to the department the Thresher Shaft though formed part of an agricultural Harvesting Thresher, the same was classifiable under chapter sub-heading 8483.90, more particularly in terms of Chapter Note 2 (a) to Section XVI. Hence the said show cause notice dated 4th July 2003 came to be issued to the appellants.

However, after considering the defence of the appellants and while holding that Thresher Shaft was not a transmission shaft and, therefore, was not classifiable under chapter sub-heading 8483.90, but it was rightly classifiable under chapter sub-heading 8433.00 in view of Chapter Note 2 (b) to Section XVI, dropped the proceedings. The Commissioner (Appeals) by the impugned order held that the Tribunal in case of **CCE vs. Kafila Forge Ltd.** reported in **2004 (167) E.L.T. 343** had held that crank shaft, tappet shaft, gears wheel, pulleys and picking shafts were classifiable under sub-heading 84.83 as well as in **New Standard Engineering Co. Ltd. vs. CCE** reported in **2003 (153) E.L.T. 329** had held that transmission shafts, crank shafts, were classifiable under sub-heading 84.83 and that the ratio of the said decisions are applicable to the facts of the case, and therefore the department was justified in classifying the product under 8483.90 and, hence, set aside the order passed by the Adjudicating Authority and held that the appellants are liable to pay the duty amount of Rs. 11,22,746/-.

4. The matter relates to the classification of the product. It is the case of the department that the product is classifiable under chapter sub-heading 8483.90 in view of Chapter Note 2 (a) which reads thus :

> "Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than headings No. 84.09, 84.31, 84.48, 84.66, 84.73, 84.85, 85.03, 85.22, 85.29,

85.38 and 85.48) are in all cases to be classified in their respective headings.

5. It is the case of the appellants that the product in question being not a transmission shaft, it is classifiable under chapter sub-heading 8433.00 more particularly in view of Chapter Note 2 (b) and that the Chapter Note 2 (a) has no application to the matter in hand.

6. The chapter sub-heading No. 8433.00 relates to the entry "harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading No. 8437".

7. The chapter sub-heading 8483.90 refers to the products other than those in in-listed in relation to Chapter Heading 84.83. The said sub-heading reads as "Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shafts bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque convertors; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)". Sub-heading 8483.10 refers to "crankshafts intended for use in sewing machines".

8. Plain reading of the order passed by the Adjudicating Authority discloses that the same had been passed solely on the basis of diagram of Thresher produced by the assessee. Since it was the contention of the assessee that the classification has to be in terms of chapter note 2 (b), it was necessary to ascertain whether the assessee had established the case to the effect that the product in question can be suitably used solely or principally with a particular kind of machine, which are classifiable under the sub-heading enumerated under the said chapter note. Without ascertaining the same, the Adjudicating Authority was not justified in jumping to the conclusion merely on the basis of diagram that the product is classifiable under sub-heading 8433.00. Equally it was for the department to establish that the classification has to be in terms of chapter note 2 (a). Perusal of the impugned order, nowhere discloses any reference to any material on record either placed by the department or by the assessee to ascertain whether the product satisfies the requirement of the respective chapter notes. Merely because in other cases, the Tribunal has taken a view that the Crank shaft and transmission shaft are classifiable under chapter sub-heading 8483.90 that itself cannot be a justification to hold that the product in question is also classifiable under chapter sub-heading 8483.90 without analysing as to whether the basic requirements of particular chapter note are satisfied or not. Since both the authorities having failed to conduct the necessary exercise, the same are not sustainable and are liable to be set aside and the matter to be remanded to the Adjudicating Authority to

adjudicate upon the classification of the product in accordance with provisions of law. Accordingly, the impugned order is set aside, and the matter is remanded to the Adjudicating Authority for passing appropriate order in accordance with provisions of law.

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK