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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

Date **08/08/2011**

Appeal No. E/2251/2005,2404/2005 - EX[DB]

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

To :
M/S PUNJAB TRACTORS LTD.
PHASE-IV,MOHALI DISTT.ROPAR PUNJAB

M/S PUNJAB TRACTORS LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.688-689/ 2011 EX|DB|** dated 26-7-11 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

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. 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
15. M/S PUNJAB TRACTOR LTD.
VILL- CHAPPERCHERI TEH.MOHALI DISTT.ROPAR

Assistant Registrar
(Excise Appeal Branch)

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 : 26/07/2011.
DATE OF DECISION : 26/07/2011.

Excise Appeal No. 2251 and 2404 of 2005

[Arising out of the Order-in-Appeal No. 124/CE/CHD/ 2005 dated 01/04/2005 passed by The Commissioner of Central Excise (Appeals), Chandigarh.]

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?	:	Yes

M/s Punjab Tractors Ltd. Appellants

Versus

CCE, Chandigarh Respondent

and vice-versa

Appearance

Shri B.L. Narsimhan, Advocate – for the Appellants.

Shri Sumit Kumar, 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. 688-689/2011-EX Dated : 26/07/2011

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

Since common questions of law and facts arise in both these appeals besides that both the appeals arise from same order they were heard together and are being disposed of by this common order. Appellant/ assessee are engaged in manufacture of tractors, forklift trucks & harvester combines alongwith spare parts thereof and the dispute related to the classification of the spare parts. The Adjudicating Authority after hearing the parties held that the classification of the product as claimed by the department was correct in respect of 52 parts, whereas in relation to other parts, the claim of the assessee is accepted. Being aggrieved, by the classification of 52 parts, the assessee carried the matter in appeal before the Commissioner (Appeals). By the impugned order dated 1st April 2005, the lower appellate authority while accepting the contention of the assessee dropped the demand in relation to 17 items out of those 52 items. Being aggrieved by the decision of the lower Appellate Authority rejecting the claim of assessee in relation to 35 items, the present appeal has been preferred by the assessee, simultaneously department having been aggrieved by the order dropping the demand in relation to the 17 items, they have also preferred the appeal.

2. As far as order of the Adjudicating Authority is concerned, it cannot be disputed that the authority after considering rival contentions on the basis of reasons recorded in the order rejected the claim of the assessee in relation to 52 items. Whether the justification for rejection of the claim was right or wrong, obviously the Appellate Authority ought to have considered the same in accordance with provisions of law and ought to have decided by giving cogent reasons for the same. The impugned order, as rightly pointed out by the advocate for the appellants as well as DR for the respondent, does not deal with any of the reasoning either to support the dropping of the demand of duty in relation to 17 items or for confirmation of order of the adjudicating authority in relation to the remaining items. Indeed the impugned order is totally silent about 35 items out of the 52 items and even in the case of 17 items, the impugned order merely records that the contentions canvassed on behalf of the assessee in relation to those items were acceptable to the Appellate Authority. As rightly pointed out by DR, the order in this regard is required to be reasoned order. The DR justify is in drawing our attention to the decision of the Apex Court in the matter of **CCE, Bangalore vs. Srikumar Agencies** reported in **2008 (232) E.L.T. 577 (S.C.)**.

3. The DR has also drawn our attention to the decision in the matter of **Punjab Tractors Ltd. vs. CCE, New Delhi** reported in **2002 (149) E.L.T. 596 (Tri. - Del.)** and **G.S. Auto International Ltd. vs. CCE, Chandigarh** reported in **2003 (152) E.L.T. 3 (S.C.)**. The learned advocate on his part has also drawn our attention to the certificate issued by the Chartered Engineer dated 28th February 2004 in support of their claim and the fact of non-consideration thereof by the Commissioner (Appeals).

4. The main contention on behalf of the assessee appears to be that the authorities below ought to have considered the effect of Section Note 2 under Section XVI as well as the provisions of Chapter 84 in the Central Excise Tariff Act. Similarly, as pointed out on behalf of the department, it was also necessary for the authorities below to take into consideration the law laid down by the Apex Court and the Tribunal in relation to classification of the products. In the absence of such exercise by the lower Appellate Authority, the impugned order being a totally a non-speaking order, the same is liable to be set aside and the matter to be remanded to the Commissioner (Appeals) to decide the appeal afresh in accordance with provisions of law and taking into consideration the relevant judicial pronouncements, after hearing the parties. Hence, we allow both the

appeals and set aside the impugned order and remand the matter to the Commissioner (Appeals) to decide the said appeal afresh bearing in mind the observations made above.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK