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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/2289/2005,2337/2005,2594/2005 - EX[DB] & E/CO/158/05-EX Date **20/12/2011**

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

To :
M/S DOABA ROLLING MILLS. PVT.LTD.
MEERUT ROAD MUZAFFAR NAGAR U.P.

M/S DOABA ROLLING MILLS. PVT.LTD. Appellant
Vs
C.E.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.1038-1040/ 2011 EX[DB]** dated 09-12-11 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. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.AALOK ARORA,ADV
82-MISSION COMPOUND,SAHARANPUR (U.P.)

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. M/S TAPSAYA STEELS PVT.LTD.
7TH KM STONE,MEERUT ROAD,
MUZAFFARNAGAR

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 2289 & 2337 of 2005
Excise Appeal No. 2594 of 2005 & E/CO/58/2005

[Arising out of Order-in-Appeal No. 62-63/CE/APPL/MRT-I/2005 dated 29.4.2005 passed by the Commissioner of Central Excise (Appeals), Meerut]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters 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 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.

Excise Appeal No. 2289 & 2337 of 2005

M/s. Doaba Rolling Mills (P) Ltd. — Appellants
M/s. Tapasya Steels Pvt. Ltd.

Vs.

Commissioner of Central Excise — Respondent
Meerut I

Excise Appeal No. 2594 of 2005 & E/CO/58/2005

Commissioner of Central Excise — Appellants
Meerut

Vs.

M/s. Tapasya Steels Pvt. Ltd. — Respondent

Appearance:

Shri Alok Arora, Advocate for the Appellants
Shri N. Pathak, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 28.11.2011

FINAL **ORAL ORDER NO. 1038-1040/2011-EX**

Per Archana Wadhwa (for the Bench):

All the appeals, two by assessee and one by the revenue are disposed of together as they arise out of the same impugned order passed by the authorities below.

2. After hearing both sides, we find that the proceedings were initiated against M/s. Tapasya Steels Pvt. Ltd. and M/s. Doaba Rolling Mills Pvt. Ltd., engaged in the manufacture of non-alloy steel ingots proposing clubbing of clearances of both units by alleging that M/s. Tapasya Steels Pvt. Ltd is not a independent unit but a deemed unit of M/s. Doaba Rolling Mills (P) Ltd, set up with intention of availing the benefit of SSI exemption which was otherwise not due to them.

3. As such, by clubbing the clearances of M/s. Tapasya Steels Pvt. Ltd with the clearance of M/s. Doaba Rolling Mills (P) Ltd, the benefit of small scale exemption notification No. 8/2002 is sought to be denied to them and Central Excise duty of Rs.15,98,714/- was proposed to be

confirmed for a period 1.4.2002 to 31.3.2003 by way of issuance of show cause notice dated 3.10.03.

4. The said show cause notice was adjudicated by the Jt. Commissioner denying the benefit of Notification No. 8/2002 and confirming demand of duty as proposed against M/s. Tapasya Steels Pvt. Ltd along with confirmation of interest. In addition, penalty of identical amount was imposed on M/s. Tapasya Steels Pvt. Ltd. The said order of Jt. Commissioner was appealed against before Commissioner (Appeals).

5. It is seen that identical proceedings were initiated against both the assessees for the earlier period also by way of issue of separate show cause notices. As the demand was confirmed by the lower authorities, the matter travelled up to Tribunal. The Tribunal in the same appellants case reported as 2004 (174) ELT 108 (Tri-Delhi) set aside the impugned order of authorities below by holding that the value of clearances of the units cannot be clubbed unless there is clear and specific finding that there is mutuality of business interest between two units and common finding and financial flow back is there. Accordingly, the disputed issue was settled in favour of the assessee.

6. When the appellants drew the attention of Commissioner (Appeals) to the earlier order of the Tribunal in their own case holding that the clearance of the two units cannot be clubbed, he observed that the Tribunal order is for the earlier period. Extending of water supply facility by one unit to the other show business interest between the two

units and therefore, the case law relied upon by the appellant does not appear to be applicable in the present case. He accordingly, remanded the matter to the original adjudicating authority on the issue of common business interest, common funding, and financial flow back.

Revenue's appeal is against that part of the impugned order of Commissioner (Appeals) vide which he has remanded the matter on the ground that he has no powers of remand.

7. We have gone through the earlier order of the Tribunal dealing with the same issue between the same two parties i.e. M/s. Tapasya Steels Pvt. Ltd and M/s. Doaba Rolling Mills. It stands held by the Tribunal that there is no common financial flow back between the two units or business interest in each other, the clubbing of clearances of both the units cannot be permitted. When the above position was placed before the Commissioner (Appeals), he did not follow the same on the ground that the same was for the earlier period.

8. We find no justification in the above stand of the Commissioner (Appeals). Admittedly, show cause notices were being repeatedly issued to the same appellant proposing clubbing of clearances of two units. The first such show cause notice resulting in confirmation of demand by the lower authorities travelled up to Tribunal and was held to be bad. In such a scenario, the period involved in the first show cause notice is bound to be different than the period in the subsequent show cause notice. Such a distinction drawn by the Commissioner (Appeals) only reflect upon his anxiety to hold against the assessee.

Admittedly, the dispute was between the same two parties and was resolved in favour of the assessee. The said decision of the Tribunal is not reported order appealed against by the Revenue. As such, the '*lis*' between the said two assessee and the department was settled in favour of the assessee by the earlier decision of the Tribunal which the lower authorities were bound to follow.

9. In view of the above facts, we set aside the impugned order of Commissioner (appeals) remanding the matter to lower authorities for fresh consideration of various evidences reflecting upon the commonness of two units. The assessees' appeals are allowed.

10. As regards Revenue's appeal, we have already set aside the impugned order of Commissioner (Appeals) while disposing of the appellants appeal. As such, nothing survive in the Revenue's appeal and same is accordingly disposed of. Cross objection also stands disposed of.

(Operative part of the order pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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