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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 17/02/2012

Appeal No. E/1259/2010-1260/2010 - EX[DB]
E/S/1295-1296/2010-EX

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

To :
M/S. TIRUPATI METAL WORKS
M-21, MAHAVIR GALI, MANDOLI, DELHI

M/S. TIRUPATI METAL WORKS Appellant

Vs

C.E.D. DELHI II **STAY ORDER NO. 289-290/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/182-183/ 2012 EX[DB]** dated 15-2-12 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 II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.K.L.REKHI (CONSLT)
28,PUSHPANJALI,VIKAS MARG EXTENSION, DELHI-92

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-3
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. SANJAY GUPTA, DIRECTOR
C/O. SUPERLINK POLYFEB LTD. 8-13, INDUSTRIAL AREA,
PH-III, GONDPUR, PAONTA SAHIB (HP)

Assistant Registrar
(Excise Appeal Branch)

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

Excise Stay Application Nos. 1295-1296 of 2010
Excise Appeal Nos. 1259-1260 of 2010

[Arising out of Order-in-Original No. 18/2009 - 2010 dated 26.2.2010 passed by the Commissioner of Central Excise, Delhi II]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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

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M/s. Tirupati Metal Works
Sanjay Gupta, Director of
Superlink Polyfeb Ltd. — Appellants

Vs.

Commissioner of Central Excise
Delhi II — Respondent

Appearance:

Shri K.L. Rekhi, Advocate for the Appellants
Shri N. Pathak, SDR for the Respondent

<u>CORAM</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing /decision: 9.2.2012

STAY ORAL ORDER NO 289-290/2012-EX(BR)

FINAL **ORAL ORDER NO. A/182-183/2012-EX(BR)**

Per Archna Wadhwa (for the Bench):

After hearing both sides, we find that duty of Rs.2,27,17,162/- stands confirmed against the applicant along with imposition of penalty of identical amount. In addition, penalty of Rs. 25 lakhs stand imposed on Shri Sanjay Gupta, Director of one of Superlink Polyfeb Ltd.

2. After hearing both sides, we find that the M/s. Tirupati Metal Works is engaged in the manufacture of Aluminium ingots on job work basis for M/s. Superlink Polyfeb Ltd. The said Aluminium ingots were being manufactured by them out of aluminium waste and scrap imported by M/s. Superlink Polyfeb Ltd and supplied to the appellants. The final product i.e. aluminium ingots manufactured by them were being cleared without payment of duty.

3. Revenue entertained a view that inasmuch as the M/s. Superlink Polyfeb Ltd. was enjoying the benefit of area based notification No. 49/2003 and 50/2003-C E and as aluminium ingots received by M/s. Superlink Polyfeb Ltd., were further used by them for clearance of duty paid goods, the appellant was required to discharge the duty liability on the aluminium ingots manufactured by them on job work basis. Accordingly, the proceedings were initiated against them resulting in passing of present impugned order.

4. Learned Advocate appearing for the appellant fairly concedes that benefit of notification on job work was not available to the appellant. However, he further submits that they have claimed the benefit of modvat credit of duty paid on the waste and scrap at the time of import of the same, which would be sufficient to neutralise the duty demand. Such request of the appellant stand rejected by the Commissioner on the sole ground that they have not ~~get~~ got themselves registered with the department and has not filed any declaration and not followed the due procedure. Though the Hon'ble Supreme Court's decision in the case of Formica India Division vs. Collector [1995 (77) ELT 511(SC)] and in the case of Collector vs. J.K. Synthetics Ltd. [1996 (87) ELT 582 (SC) were placed before the Commissioner, in his defence, he has observed that they are clearly distinguishable without giving any reasons for such distinction made by him.

5. We find that the law on ~~such~~ said issue is no more res integra and stand settled by various decisions of the Tribunal as also of the Hon'ble Supreme Court. Admittedly, the appellant could not claim the benefit of modvat credit by following the regular procedure and as during relevant period their final product was cleared without payment of duty. It is only when the duty stands raised against them, their prayer for neutralising the same against otherwise available modvat credit of countervailing duty and SAD paid by the importer M/s. Superlink Polyfeb Ltd. at the time of import of the waste ands scrap which stand used by the manufacturer of aluminium ingots, would be made.

6. From the calculations chart placed before us, we find that quantum of credit available to the appellant would be either sufficient to neutralise the demand or may be in excess of the demand confirmed against them. In any case, inasmuch as the Commissioner (Appeals) has not gone to the calculations of the credit available to the appellant and has rejected their plea on the preliminary point of non-consideration of availability of modvat credit, we set aside the impugned order and remand the matter to the Commissioner for examining the appellant's ~~liability to the~~ entitlement of modvat credit of duty paid on the waste and scrap at the time of import of the same. We, accordingly after dispensing with the condition of pre-deposit ~~and~~ remand the matter to Commissioner for fresh decision in the light of the observations made against the above.

7. Stay petitions as also appeal gets disposed in the above manner.

(Pronounced in the open Court)

(Archana Wadhwa
Member(Judicial)

(Mathew John)
Member(Technical)

ss