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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/868 /2006 - EX[DB] , E/ROA/95/2011-EX
E/CO/172/06-EX

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

To :
M/S S.D.O COIL FABRICATION SUB DIVISION
66, K.V.GRID COLONY PATIALA (M.P)

M/S S.D.O COIL FABRICATION SUB DIVISION Appellant

Vs

C.E. LUDHIANA Respondent

MISC ORDER NO. 136/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/487/ **2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.VIKRANT KACKRIA
509, SEC-7,PANCHKULA, HARYANA

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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/ROA 95/2011 in E/Appeal No.868/2006 with CO/172/06

(Arising out of order in appeal No.436/CE/CHD/05 dated 15.12.05 passed by the Commissioner of Customs & Central Excise(Appeals), Chandigarh)

Date of Hearing: 8.2.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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 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 SDO, Coil Fabrication — Appellants

Vs

CCE, Ludhiana — Respondent

Appeared for the Appellant: Shri Vikrant Kakaria, Advocate
Appeared for the Respondent: Shri S.K. Panda, Jt. CDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

MISC ORDER No. 136/2012-EX (BR)
FINAL ORDER No. A/187/2012-EX (BR)

Per Archana Wadhwa:

The Restoration Application is for restoring the appeal dismissed for non-prosecution vide order No. 622/2011-Ex dated 20.7.2011. The learned Counsel explained that he was arguing on his legs in another Court when the matter was called and dismissed.

2. Accepting the above explanation, we recall the order of dismissal and restore the appeal to its original number.

3. In as much as a short issue is involved, we proceed to dispose of the appeal itself with the consent of both the sides. The appellant filed a refund claim with their jurisdictional Central Excise authority on 20.6.2004. In as much as the refund claim was not complete, the same was returned to the appellant with the direction to remove the discrepancy as mentioned in the said letter. It is seen that the said letter dated 13.9.05 addressed by the Deputy Commissioner to the appellant directed them to remove the discrepancies and only ~~than~~ then the admissibility of the refund claim would be decided by his office after issuing show cause notice, if required.

4. The said letter of the deputy Commissioner was appealed against by the appellant before the Commissioner (Appeals). The Appellate authority observed that in as much as the refund claim stand returned to the appellant and they have not submitted the requisite documents, the revised claim does not stand rightly processed by the original adjudicating authority. As regards the issuance of show cause notice and observance of principles of natural justice, he observed that the Assistant Commissioner had returned the claim to the appellant but the proper documents were not supplied to the department as a result of which, the Assistant Commissioner was not able to process the refund claim.

5. As is seen from the above, the refund claim in any case does not stand considered by the original adjudicating authority. He has simply

observed that as the requisite documents does not stand provided by the appellant, he has not processed the refund claim. Even the order of Commissioner (Appeals) is to the effect that the Assistant Commissioner was not able to process the refund claim.

6. As is seen from the above, the original refund claim was returned to the appellant and was not processed on the ground that requisite documents ~~was~~ were not supplied by the appellant. The learned Counsel submits that all the documents were subsequently given. In view of the above fact, we are of the view that in as much as, no decision has been taken by the adjudicating authority on the refund application filed by the appellant; the matter needs to be remanded to him. Needless to say that based on the facts and circumstances as also the submission of the Counsel for the appellant, if any, he would process the refund claim, after observing the principles of natural justice including issuance of the show cause notice. The ROA application and appeal are disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Technical Member

(ARCHANA WADHWA)
Judicial Member

MPS*