14 TELEGRAM : CEGCANAL
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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/2591/2002-2593/2002 - EX[DB]   Date **21/02/2012**

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

To :
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA   Appellant
Vs
U.P. TWIGA FIBRE GLASS LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/195-197/ 2012 EX[DB]** dated 16-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
U.P. TWIGA FIBRE GLASS LTD.,
INDL AREA, SIKANDRABAD

2. Adv. / Consult SH. RUPESH KUMAR ADV.,
F-12A, KAILAS COLONY,
(BASEMENT) N. DELHI-48

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)

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. III

DATE OF HEARING : 15/02/2012.
DATE OF DECISION : 15/02/2012.

Excise Appeal Nos. 2591-2593 of 2002

[Arising out of the Order-in-Appeal No. 241-43/CE/MRT/2002 dated 13/08/2002 passed by The Commissioner (Appeals), Customs & Central Excise, Ghaziabad.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, 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?	:	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

CCE, Noida — Appellant

Versus

M/s U.P. Twiga Fibre Glass Ltd. — Respondent

Appearance

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

Shri Rupesh Kumar, Advocate – for the Respondent.

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

FINAL Order No. A/195-197/2012-EX (BR) Dated : ______________

Per. Archana Wadhwa :-

After hearing both the sides, we find that Commissioner (Appeals) vide his order dated 25/3/97 held that unjust enrichment does not apply to captively consumed goods, assessed on provisional basis and accordingly allowed the appeal of the respondent, by setting aside impugned order of original Adjudicating Authority. Being aggrieved with the said order of Commissioner (Appeals), Revenue preferred an appeal before Tribunal. The Revenue's appeal was decided vide final order No. 90-92/2003-B dated 14/1/03 and by taking note of various decisions, as was available during the relevant time the appeals were dismissed.

2. It is seen that being aggrieved with the said order of dismissal of appeals by the Tribunal, Revenue filed a reference application before the Hon'ble High Court of Allahabad. The Hon'ble High Court vide their order dated 9/1/04 directed the Tribunal to draw statement of facts and to refer the question of law to the Hon'ble High Court. The said order of the Hon'ble High Court was challenged by the assessee before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide their order dated 21/2/05 set aside the order of the Hon'ble High Court directing the Tribunal to refer the question of law to them and allowed the SLP filed by the assessee.

3. However, the above fact of setting aside of the order of the Hon'ble High Court directing the Tribunal to refer the statements of facts to them was neither brought to the notice of the Tribunal nor to the notice of the Hon'ble High Court. Accordingly, statement of facts was drawn by the Tribunal and question of law was referred to the Hon'ble High Court. The said question of law so referred to the Hon'ble High Court stands answered by them vide their order dated 24/2/2011. The Hon'ble High Court has said that the questions referred to them are answered against the Department and in favour of the Assessee. By holding so, they have sent the file back to the Tribunal for passing the consequential orders.

4. In view of the above developments, the appeal filed by the Revenue is required to be rejected. We order accordingly with consequential relief to the respondent.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

PK