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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/1975/2011 - EX[DB] WITH E/S/2607/2011-EX& E/COD/294/2011-EX   Date **13/01/2012**

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

To :
M/S R.B. CONSTRUCTION COMPANY,
225, SOMESHWAR COMPLEX-II, NEAR JODHPUR
CHAR RASTA, SATELLITE ROAD, AHMEDDABAD.
380015

M/S R.B. CONSTRUCTION COMPANY, Appellant

Vs

C.C.E. JAIPUR II **MISC ORDER NO. 32/2012-EX** **STAY ORDER NO. 46/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/17/ 2012 EX[DB]** dated 10-1-12 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult Sri. K. K. ANAND, ADV. C/c
MR.PARESH M.DAVE
43, NEW YORK TOWER "B", 4TH FLOOR, OPP. MUKTI DHAM JAIN DERASAR,
NR. THALTEJ CROSS ROAD, AHMEDABAD-380054

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 : 05/01/2012.
DATE OF DECISION : 05/01/2012.

Excise COD Application No. 294 of 2011 in Appeal No. 1975 of 2011

M/s R.B. Construction Company — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri K.K. Anand, Advocate – for the appellant.

Shri Sumit Kumar, Authorized Representative (DR) – for the Respondent.

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

Misc. Order No. 32/2012-EX(BR) Dated : ____________

Per. Archana Wadhwa :-

As during the intervening period, the matter was pending before the Hon'ble High Court and as per the final order of the High Court, the said period is to be taken out of consideration for the purposes of limitation, we condone the delay in filing the present appeal and allow the COD application.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK

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 : 05/01/2012.
DATE OF DECISION : 05/01/2012.

Excise Stay Application No. 2607 of 2011 in Appeal No. 1975 of 2011

M/s R.B. Construction Company — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri K.K. Anand, Advocate – for the appellant.

Shri Sumit Kumar, Authorized Representative (DR) – for the Respondent.

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

STAY Order No. 46/2012-EX (BR)
FINAL Order No. A/17/2012-EX(BR) Dated : ____________

Per. Archana Wadhwa :-

After dispensing with the condition of pre-deposit of duty of Rs. 1,32,716/- and penalty of Rs. 25,000/-, we proceed to decide the appeal itself in as much as the short issue is involved.

2. After hearing both the sides, we find that the appellants are engaged in the manufacture of PSC Slabs etc. The dispute arose about the applicability of exemption Notification No. 36/94-CE. Accordingly, proceeding were initiated against them proposing

denial of the said exemption notification. The said proceedings resulted in passing of an order by the original Adjudicating Authority denying the exemption and upheld by Commissioner (Appeals). However, the Appellate Authority, though denied the benefit of the exemption in terms of the said Notification No. 36/94-CE, remanded the matter to the lower authorities for quantification of the demand. The said order of Commissioner (Appeals), being order-in-appeal No. 675 (KDT) CE/JPR-II/2000 dated July 2000 was never put to challenge by the appellant before the higher Appellate forum.

3. In the demand proceedings the original Adjudicating Authority, quantified the demand as around Rs. 5,00,000/- (Rupees Five Lakhs). The said order was appealed against and Commissioner (Appeals) vide his impugned order dated 19/3/04 reduced the duty quantum to Rs. 1,32,716/- and penalty to Rs. 25,000/-, hence, the present appeal.

4. It is the contention of the learned advocate that Commissioner (Appeals) in his subsequent orders has decided the applicability of the Notification in their favour. However, in the present matter, he has not extended the benefit to the appellant on the sole ground that the earlier order passed in July 2000, denying the exemption Notification, was never appealed again by the appellant and, as such, had ~~attend~~ attained finality. He fairly agrees that no appeal was filed against the earlier order of Commissioner (Appeals). He also does not have any grievance

with the quantification of the demand in terms of earlier orders of Commissioner (Appeals) passed in year 2000. As such, he fairly agrees that the duty of Rs. 1,32,716/- is required to be confirmed against them. However, he submits that as in the subsequent matters, the benefit of exemption Notification have been held to be available to the applicant, the penalty of Rs. 25,000/- may be set aside.

5. Learned DR appearing for the Revenue submits that Modvat credit of approximately Rs. 40,000/- stand denied to the appellant, which they are not challenging, the penalty of Rs. 25,000/- stands imposed in respect of said denial of Modvat credit.

6. In his rejoinder learned advocate submits that the denial of credit was on the ground of non-availability of certain documents. They are not challenging the same in view of the small amount of Modvat credit. There was no malafide on their part so as to wrong availment of the credit.

7. After appreciating submissions made by both the sides, we confirm the demand of duty as not being rightly contested by the learned advocate. As regards penalty, keeping in view that in subsequent orders, the benefit of the Notification have been held to be available to the appellant, and in view of the fact that availment of Modvat credit cannot be held to be on account of any malafide, we set aside the penalty of Rs. 25,000/- imposed

upon them. The stay petition as also the appeal get disposed of, in above terms.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK