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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/2362/2011 - EX[DB] WITH E/S/3090/2011-EX — Date **22/03/2012**

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

To :
M/S ETAH STEELS PVT. LTD.
10/22, KATRA WAZIR KHAN, RAMBAGH, AGRA (U.P.)
282006

M/S ETAH STEELS PVT. LTD. — Appellant
Vs
C.C.E. KANPUR — Respondent

STAY ORDER NO. 467/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/334/ 2012 **EX[DB]** dated 05-3-12 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Stay Application No. 3090 of 2011
Excise Appeal No. 2362 of 2011

M/s. Etah Steels Pvt. Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Kanpur

Appearance:

Shri R. Santhanam, Advocate for the Appellants
Shri R.K. Verma, DR for the Respondent

CORAM:

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

Date of Hearing/decision : 5.3.2012

STAY ORAL ORDER No. 467/2012-EX(BR)
FINAL **ORAL ORDER NO . A/334/2012-EX (BR)**

Per Archana Wadhwa (for the Bench):

Total duty confirmed against the applicant is to the tune of Rs.8,69,445/- along with imposition of penalty of identical amount. Learned Advocate appearing for the applicant submits that they have already deposited amount of Rs.7.65 lakhs and refers to various TR challans depositing the duty in part. Learned DR appearing for the Revenue submits that the said challans are prior to passing of impugned order by the Commissioner and their being no finding of the

Commissioner on the said fact of deposit, the same cannot be accepted as deposit towards the present confirmed demand of duty.

2. However, without arriving at any finding on the above issue, we find that present impugned order of Commissioner stands passed in gross violation of principle of natural justice. In para 22 of his order, he has recorded various dates on which the matter was fixed by the Commissioner for personal hearing. However, it seems that all those dates were at ~~before~~ the time when the matter was pending before his predecessor. After the present Commissioner took over the charge it seems that no fresh hearing date was fixed and communicated to the appellants. Inasmuch as the appellant had also not filed any reply to the show cause notice as observed by learned Commissioner [though learned Advocate submits that the reply was filed], the impugned order stand passed by the Commissioner without consideration of any submissions of the appellants.

3. It is also seen that demand stands confirmed as consequence of the appellants duty liability in terms of APC fixed by the Commissioner. The said fixation of APC was challenged by the applicant before the Hon'ble Tribunal and Tribunal vide its Final Order No. A 219/2001 – NB(D) dated 9.3.2001, the matter was remanded for fixing of fresh APC in the light of the observations made in the said order. Tribunal's order was challenged by the Revenue before the Hon'ble Allahabad High Court and vide their order dated 5.10.04, the reference application filed by the Revenue was rejected.

4. Learned advocate appearing for the appellant submits that even after the rejection of reference application, fresh APC does not stand fixed by the Commissioner. As such, the present impugned order confirming the earlier APC fixed, cannot stand.

5. In view of the foregoing, the impugned order having been passed in violation of principles of natural justice as also on the ground that the present duty confirmation in terms of earlier APC fixed which has already been set aside, we deem it fit to set aside the present impugned order and remand the matter for denovo adjudication. Needles to say that earlier remand concerning fixation of fresh APC would be decided first and then the present proceedings would be finalised based upon the outcome of the appeals in earlier remand proceedings.

6. The appellants are at liberty to raise all the pleas in their defence. Stay petition as also appeal gets disposed of in the above manner.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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