14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmai[illegible]m

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1005/2006 - EX[DB] Date **27/03/2012**

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

To :
M/S STL EXPORTS LTD.
N-4,III FLOOR, OLD IDA BUILDING 15-16 JAWAHAR
MARG INDORE

M/S STL EXPORTS LTD. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 349 2012 EX[DB]** dated 20.3.2012 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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 Reg
(Excise Appeal Br

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

E/Appeal No.1005/2006

(Arising out of order in original No.101/Comm/Cex/Ind/2005 dated 21.12.2005 passed by the Commissioner of Central Excise, Indore)

Date of hearing/decision: 20.3.2012

For Approval and signature:

Hon'ble Mr Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, 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?

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

M/s STL Exports Ltd — Appellant

Vs

CCE, Indore — Respondent

Present: Shri Mayak Garg, Advocate for Appellant
Present: Shri Nagesh Pathak, AR for Respondent

FINAL ORDER No, A/349/2012-EX(BR)

Per Justice Ajit Bharihoke:

This appeal is directed against the adjudication order dated 21st December, 2005 reading thus:-

In view of my findings above, I pass the following order:

(i) Show cause notice No. v(73)15-41/98/Adj/2311 dated 28.9.1998

(i) The duty amounting to Rs. 2,19,146/- (Rs Two lacs

Nineteen Thousand one hundred forty six only) is confirmed for recovery from the notice ie. M/s STL Exports Ltd (100% EOU) Taraganj Industrial Area, A.B. Road, Sarangpur, Distt Rajgarh under Section 11A of the Central Excise Act, 1944

(ii) A penalty of Rs. 40,000/- (Rupees Forty thousands only) is imposed on M/ STL Exports Industrial Area, AB Road, Sarangpur Distt. Rajgarh under Rule 173-Q of erstwhile Central Excise Rules, 1944;

(iii) 1650 Nos of GI pipes valued at Rs. 3,96,644/- (Rupees Three lacs Ninety six thousand six hundred forty four only) is ordered for confiscation under Rule 173-Q of erstwhile Central Excise Rules, 1944. However, I give option to the notice to redeem the same on payment of fine of Rs. 50,000/- (Rupees Fifty thousand only).

(iv) Truck No. MP-09-K/8256 valued at Rs. 5,00,000/- (Rupees Five lacs only) is ordered for confiscation, however give option to the noticee to redeem the same on payment of fine of Rs. 50,000/- (Rs. Fifty thousands only).

2. Briefly stated the facts giving rise to this appeal are that the appellants are a 100% Export oriented Unit and are engaged in galvanizing of MS Pipes. That they are getting MS pipes/zinc without payment of duty under Notification No. 109/95-CE dated 4.1.1995 as also were importing zinc without payment of customs duty under Notification No. 53/97-; that a Trade Notice dated 17.4.2004 was issued by Mumbai Commissionerate stating that galvanizing of MS pipes does not amount to manufacture within the ambit of Section 2-F of Central Excise Act. It is further alleged that the appellants had cleared galvanized pipes in domestic area without payment of Central Excise duty as galvanizing does not amount to manufacture.

3. It is alleged that on 7.4.1998, a consignment dispatched from the factory of the appellant for domestic market was seized by Inspector Central Excise having jurisdiction over the factory on the ground that the appellant had not paid customs duty on the consignment. In this regard, a show cause notice dated 28.9.98 was issued to the appellant for demanding duty under Section 28 of the Customs act. The appellant filed his reply to the show cause notice and after giving hearing to the appellant, the adjudicating authority confirmed the demand of customs duty.

4. Being aggrieved by the order of the Adjudicating Authority, the appellant preferred an appeal before the CESTAT being Customs Appeal No. 137/2003-NB(C), The aforesaid appeal was allowed by CESTAT with the following observations:-

"As the Revenue has already demanded Central Excise duty, part of which has also been upheld by the Tribunal, it is not open to the Department to demand again the customs duty in respect of same products and for the same period. Under para 7 of the Notification, duty can be demanded under Section 3 of the Central Excise Act and if goods are not excisable, customs duty is payable by the 100% Export Oriented Undertakings in respect of the goods cleared in DTA. As undisputedly the Central Excise duty has been demanded, the customs duty is not demandable from the appellants. On query from the Bench, the learned Advocate informed that the goods, which have been seized from the truck, are not covered by the earlier two show cause notices issued on 24.4.98 and 21.7.98. We therefore, set aside the impugned order and allow the appeal subject to Revenue's right of taking action against the goods seized from the tuck under provisions of Central Excise Act."

5. As is apparent from the order, while allowing the appeal, CESTAT projected the right of Revenue to take action against the appellant in

respect of the goods seized from the truck under the proviso of excise duty. The adjudicating authority instead of issuing a fresh show cause notice under the Excise Act, proceeded to decide the issue and confirmed the demand. He also passed order of confiscation of truck as well as GI pipes and passed redemption order in respect of the seized articles. It is this order against which the appellant has preferred the present appeal.

6. Learned Counsel for the appellants submits that from the record, it is evident that as regards the show cause notice issued under the Customs Act and demand confirmed, the Tribunal had allowed the appeal of the appellants subject to Revenue's right to take action against the goods seized from the truck under the provision of Excise Act. This only permitted the Revenue authorities to initiate fresh proceedings against the appellant. This could be done by issuing a show cause notice to the appellant calling upon him to show cause why the excise demand may not be imposed against him and adjudicate the issue in accordance with the prescribed procedure. Learned Counsel submits that instead of following the procedure, the adjudicating authority treated the show cause notice issued under the Customs Act as show cause notice under the Excise Act and proceeded to decide the matter, which procedure, is not sustainable under law and has resulted in grave injustice to the appellant.

7. Shri Nagesh Pathak, DR has fairly conceded that the procedure adopted by the adjudicating authority is not sustainable under the law and he ought to have initiated fresh proceedings against the appellant under the Excise Act by issuing a fresh show cause notice and adjudicating that matter after hearing the appellant.

8. From the above, it is evident that adjudicating authority has confirmed the impugned demand by not the following the prescribed procedure. This has resulted in denial of fair opportunity to the appellant to defend himself properly. Thus in our considered opinion the impugned order suffers from legal infirmity, as such the order of adjudicating authority cannot be sutained. Thus we set aside the impugned order and allow the appeal.

(Order dictated and pronounced in the open Court.)

(Justice Ajit Bharihoke)
President

(RAKESH KUMAR)
Technical Member

MPS*