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

REGISTERED / AD
Email : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date **30/03/2012**

Appeal No. E/888 /2005 - EX[DB]

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S HANSA METALLICS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/377/ 2012 EX[DB]** dated 27-3-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S HANSA METALLICS LTD.
VILLAGE-SAMALHERA, LALRU
DISTT.PATIALA

2. Adv. / Consult SH. PAWAN KUMAR, ADV.,
PANACEA LEGAL SERVICES,
532, 1ST FLOOR,
SECTOR-36-B, CHANDIGARH
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
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 27.03.2012

For approval and signature:
Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, 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.	
2	Whether it should 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 Departmental authorities?	

Excise Appeal No. 888 of 2005
(Arising out of order in appeal No.146/CE/2003 dated 16.12.2003 passed by the Commissioner of Central Excise, Chandigarh).

CCE, Chandigarh Appellant

Vs.

M/s Hansa Metallics Ltd. Respondent

Present Shri Sanjay Jain, AR for the appellant
Present Sh. Pawan Kumar, Advocate present for the respondent.

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. A/377/2012-EX(BR)

Per: Justice Ajit Bharihoke:

This is the department's appeal directed against the order of the Commissioner, Central Excise, Chandigarh whereby he confirmed the central excise duty of Rs.1,31,89,542/- against the respondent under section 11A of the Act and imposed the penalty of equal amount under Section 11AC of the Act. He also raised demand of interest in terms of Section 11AB of the Central Excise Act, 1944.

2. Briefly stated facts relevant for the decision of this appeal are that the respondent were engaged in manufacture of Galvanised Corrugated Sheets falling under the sub-heading 7210.11/ 7212.11 and Galvanised Plane Sheets falling under sub-heading 7209.20 and 7210.19 of the First Schedule of Central Excise Tariff Act, 1985. Case of the respondent is that during the course of preventive check and investigation, it was found that the respondent had willfully suppressed the information about his complete manufacturing process of Galvanised Corrugated Sheets and removed the same without the registration under Central Excise Act, without issuing invoices and without paying central excise duty.

3. A show cause notice dated 01.05.2003 was issued to the respondent for the demand of duty amounting to Rs.1,52,99,868/- alongwith interest and penal action was also proposed against the respondent.

4. After giving due opportunity of responding to the show cause notice and hearing to the respondent the Commissioner, Central Excise, Chandigarh confirmed the demand amounting to Rs. 1,31,89,542/- alongwith interest and penalty of equal amount was also imposed. While passing the impugned order, ld. Commissioner relied upon the case of Srichakra Tyres – 1999 (108) ELT 361 and treated the price as cum-duty and also allowed deduction on account of duty from the selling price for arriving at the assessable value. This according to the respondent has resulted in confirmation of the demand lesser by Rs. 21,10,326/-.

5. It is contended by ld. AR that the department has sought re-consideration of the judgement dated 26.02.2002 of Hon'ble Supreme Court in Criminal Appeal No. 5862-63/99 which review petition has been admitted. Accordingly, the judgement in the matter of Srichakra Tyres relied upon by the adjudicating authority has not become final. Even otherwise, it is contended that the adjudicating authority has gone wrong in treating the value of the excisable goods

as cum excise duty and has wrongly allowed deduction on that account from the selling price for arriving at the assessable value.

6. Learned Counsel for the respondent at the outset has submitted that the respondent has also filed the appeal against the impugned order being Excise Appeal No. 1146/04-B on the ground that the demand raised by the revenue is time barred as there was no suppression of facts by the respondent. It is submitted that the Tribunal has decided the appeal in favour of the respondent vide order dictated and pronounced in the open Court on 26.11.2004 and set aside the order of the adjudicating authority holding that the entire demand is time barred. Thus, it is contended that this appeal has become infractuous. In support of this contention, learned Counsel for the respondent has placed on record a copy of Final Order No. 926/2004-B dated 22.11.2004 which relates to the demand raised vide show cause notice which is also the subject matter of this appeal.

7. Learned DR has not refuted this fact. Thus, on reading of the aforesaid final order, it is apparent that the entire demand raised against the respondent M/s Hansa Mettalics Ltd. has been set aside as time barred. The demand being time barred, the present appeal has become infractuous.

8. The result of above discussion is that the appeal is dismissed as infractuous.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant