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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

Date 13/04/2012

Appeal No. E/2634/2011 - EX[DB]
E/S/3428/2011-EX

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

To :
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302
C.C.E. GHAZIABAD Appellant

Vs

M/S BHUSHAN STEELS LTD. STAY ORDER NO. 630/12-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/431/ 2012 EX[DB]** dated 29-3-12 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 BHUSHAN STEELS LTD.
23, SITE-IV, INDUSTRIAL AREA,
SAHIBABAD, GHAZIABAD.

2. Adv. / Consult SH. RAJESH CHHIBBER, ADV,
FA-9, KAVINAGAR, GHAZIABAD

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 NEW DELHI

Date of Hearing:29.03.2012
Date of decision:29.03.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. 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.2634 of 2011 &
Stay Application No.E/ST/3428 of 2011

CCE, Ghaziabad ...Appellants

Vs.

M/s. Bhusan Steel Ltd.
Site-IV, Sahibabad Industrial Area,
Ghaziabad. ...Respondent

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

Appearance:
Shri R.K. Verma, Advocate for the appellants.
Shri Rajesh Chhiber, AR for the respondent.
STAY order No. 630/2012-EX (BR)
FINAL Order No. A/431/2012-EX (BR)

Per Rakesh Kumar:

The respondent manufacture CR Coils and CR Sheets chargeable to central excise duty. They have sales at the factory gate as well as the depots. In respect of clearances to depots, duty was required to be paid at the time of removal from the factory on the price of the goods prevailing at that time at the depots. The respondent filed a refund claim on 7.2.2011 of Rs.24,84,372/- before the jurisdictional Assistant Commissioner in respect of clearances during the period from 14.2010 to 30.11.2010, on the ground that they had been giving various discounts like – cash discounts, quantity discounts and trade discounts to their customers whose deduction is permissible form the assessable value, but since these discounts, though known to the customers before clearance, could be quantified only much later, at the time of clearance, duty had been paid on higher value without deduction of these discounts. Along with the refund claims, they also enclosed a declaration that the duty whose refund is being claimed has not been realized from their customers.

The Assistant Commissioner, vide order-in-original dated 26.4.2011 rejected the refund claims. On appeal to the Commissioner (Appeals), the Asstt. Commissioner's order rejecting the refund claim was set aside by Commissioner of Central Excise (Appeals) vide order-in-appeal dated 12.08.2011 holding that –

(a) in view of the judgements of the Apex Court in case of **Union of India Vs. Madras Rubber Factory reported in 1995 (77) ELT 433 (SC)** and of the **Tribunal in case of Commissioner of Central Excise, Chandigarh Vs. Goetze (India) Ltd. reported in 2011 (263) ELT 477 (Tribunal-Delhi),** the deduction of trade discounts known and understood at the time of removal is admissible even if the discounts are quantified later;

(b) the judgement and case laws relied upon by the Asstt. Commissioner are not applicable to the facts of the case; and

(c) the instant refund claim would be admissible to the appellants to the extent the discounts have actually been passed on to the buyers.

1.1 Against the above order of the Commissioner (Appeals), this appeal has been filed by the Revenue along with the stay application.

2. Heard both the sides. Though this matter was listed only for hearing of stay application, after hearing this matter for sometime, we were of the view that the same can be taken up for final disposal. Accordingly with the consent of both the sides, the matter was heard for final disposal.

3. Shri R.K. Verma, the learned Senior Departmental Representative assailing the impugned order reiterating the grounds of appeal, pleaded that –

(a) Board's Circular No.354/81/2000-TRU dated 30.06.2000 is not applicable to the facts of this case, as on the basis of this circular, duty cannot be refunded to the assessee on the basis of discounted transaction value arrived later by the way of issue of credit notes;

(b) the Apex Court's judgement in case of **Union of India Vs. MRP (supra)** and the judgement of the Tribunal in the case of **CCE Vs. Goetz ((India) Ltd. (supra)** are not applicable to the facts of this case;

(c) in terms of Apex Court's judgement in case of **MRF Vs. CCE, Madras reported in 1997 (92) ELT 309 (SC)** reduction of prices for whatsoever reason, subsequent to clearance of goods on payment of duty does affect the duty liability and refund claim for differential duty due to retrospective rolling back of price is not admissible; and

(d) there is no evidence that the discounts whose deduction has been claimed were known and understood at the time of removal and this is a case, where the price have been reduced subsequent to the clearance of the goods.

The learned Senior Departmental Representative, therefore, pleaded that the impugned order is not correct.

4. Shri Rajesh Chhibber, Advocate, the learned Counsel for the respondent defended the impugned order pleading that –

(a) the discounts – cash discounts, quantity discounts, etc were known at the time of removal and since by their very nature, the same could be quantified later, the deduction of discounts from the assessable value can not be denied in view of the judgment of the Apex Court in case of **Union of India Vs. MRF (supra) and;**

(b) the respondent are in a position to produce evidence in form of price lists, price circulars, etc., in support of their claim that the discounts , in question, were known at the time of removal and also the fact that the discounts had actually been passed on to the buyers.

5. We have carefully considered the rival submissions and perused the records. The basic point of dispute in this case is as to whether this is a case of retrospective downward revision of prices by giving discounts not known at

the time of removal or this is a case where the trade discounts, in question, were known before removal and the same were given to the customers later only for the reason that the same could be quantified only subsequently and at the time of removal, the same could not be quantified. If former is the case, the Apex Couart's judgement in case of **MRF Vs. CCE, Madras reported in 1997 (92) ELT 309 (SC)** would apply and if the latter is the case, the judgement of Apex Court in case of **Union of India Vs. MRF reported in 1995 (77) ELT 433 (SC)** would apply.

6. We find that the factual position is as to whether the cash discounts, quantity discounts, and other trade discounts, whose deduction is sought from the assessable value, and on the basis of which the refund of duty has been claimed, were known at the time of removal or not, has not been discussed either by Commissioner (appeals) in the impugned order or by the Original Adjudicating Authority. If the discounts in question were known and understood at the time of removal in form of price circulars, price lists, discount policy, circulated among the dealers their deduction from the assessable value would have to be allowed in view of the Apex Court's judgement in the Apex Court in the case of **Union of India Vs. M/s. Madras Rubber Factory (supra)** even if the same were quantified, subsequently, subject to the conditions that the same had actually been passed on to the

buyers. If the discounts, in question, are deductible from the assessable value, the respondent would be eligible for refund subject to the provisions of Section 11 B of the Central Excise Act, 1944 i.e. the refund claim having been filed within the prescribed limitation period and being not hit by the principle of unjust enrichment. For examining this aspect the matter has to be remanded to the Original Adjudicating Authority.

7. In view of the above discussion, the impugned order is set aside and the matter is remanded to the Original Adjudicating Authority for de novo adjudication in terms of our observations. The de novo adjudication must be completed within three months from the date of this order.

[order pronounced in open court]

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.