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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/935 /2006 - EX[DB] WITH E/M/506/2010-EX   Date **16/03/2012**

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

To :
MAHAVIR IRON FOUNDRY
67, INDUSTRIAL ESTATE NUNHAI, AGRA

MAHAVIR IRON FOUNDRY   Appellant

Vs

C.C.E. KANPUR   Respondent

MISC ORDER NO. 212/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/320/ 2012 EX[DB]** dated 07-3-12 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 SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANT KUNJ,
N. DELHI - 70

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

Misc. Application No.506 of 2010
Excise Appeal No.935 of 2006

Date of Hearing/decision : 01.03.2012

M/s Mahavir Iron Foundry — Appellants
Vs.
CCE, Kanpur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
None for the Appellants
Shri S.R.Meena, DR for the Respondent

Misc **ORDER NO . 212/2012-EX (BR) DATED**

Per Ms. Archana Wadhwa:

The appeal could not be heard within the prescribed period of 180 days for no fault on the part of the applicant and therefore, in view of the decision of the Hon'ble Supreme Court in the case of **CCE, Ahmedabad vs. Kumar Cotton Mills Pvt. Ltd. reported in 2005 (180) ELT 434 (SC)**, the interim stay as granted will continue until further orders. The Misc. application is allowed.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Excise Appeal No.935 of 2006

[Arising out of Order-In-Appeal No.356/CE/APPL/KNP, dated 09.12.2005 issued by CCE, Kanpur]

Date of Hearing/decision : 01.03.2012

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, 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?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Mahavir Iron Foundry — Appellants
Vs.
CCE, Kanpur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
None for the Appellants
Shri S.R.Meena, DR for the Respondent

FINAL **ORDER NO. A/320/2012-Ex (BR) DATED** ________

Per Ms. Archana Wadhwa:

After hearing both the sides, we find that the benefit of SSI exemption stands denied to the appellants on the ground that while manufacturing castings on job work as per the design and specifications of the customers and intended for further manufacture of diesel engines, the appellants have used the customers brand name on the castings.

AWadhwa

2. We find that the issue stands decided in the same appellant's case. Tribunal in the case of Mahavir Iron Foundry reported in 2001(130)ELT773(Tri.-Del.) by taking note of the Board's Circular No.71/71/94, dtd. 27.10.94 has held that such use of brand name of the customers will not debar the availment of benefit of ~~Modvat Credit.~~ exemption to small scale units.

3. Apart from the above, we note that the period involved in the present appeal is from April, 1994 to July, 1994, whereas the show cause notice stands issued on 22.02.99, i.e., beyond the normal period of limitation. During the relevant period, the Board's Circular held the field and was withdrawn subsequently in 2008 only. In as much as the Board's Circular was in favour of the assessee and it stands held in many decisions that Revenue cannot be heard, arguing against the Board's Circular, we find no justification for confirmation of demand by invoking the longer period of invocation. The impugned order is set aside and appeal is allowed with consequential relief.

(Pronounced in the open Court)

7/3/12
(Archana Wadhwa)
Member(Judicial)

7/3/12
(Mathew John)
Member(Technical)

RK-I