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

Appeal No. E/2259/2007 - EX[DB] WITH/ E/M/236/2012-EX   Date **21/03/2012**

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

To :
M/S INDIAN HUME PIPE CO. LTD.

POST BOX NO. 6, NEAR COLLAGE, JAIPUR ROAD,
KEKRI, DISTT. AJMER, RAJASTHAN

M/S INDIAN HUME PIPE CO. LTD. Appellant

Vs

C.C.E. JAIPUR II **MISC ORDER NO. 243/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/330/ 2012 EX[DB[** dated 06-3-12 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SH. R. SUDHINDER, ADV.,
EXPRESS BUILDING, 2ND FLOOR,
9-10, BAHADUR SHAH ZAFAR MARG,
N. DELHI-2

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

<u>COURT No. III</u>

Misc. Application No.236 of 2012
<u>Excise Appeal No.2259 of 2007</u>

Date of Hearing / Decision : 06.03.2012.

M/s Indian Hume Pipe Co. Ltd. — Appellants
Versus
CCE, Jaipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Present for the Appellants – Shri R.Sudhinder, Adv.
Present for Respondent – Shri S.K.Panda, JCDR

Misc. **Order No.** 243/2012-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.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Rakesh Kumar)
Technical Member

RK-I

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Excise Appeal No.2259 of 2007

Date of Hearing / Decision : 06.03.2012.

[Arising out of Order-In-Original No.07/CE/JP-II/Com/2007/894, dated 14.05.20007 issued by CCE, Jaipur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
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?	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 Indian Hume Pipe Co. Ltd. — Appellants

Versus

CCE, Jaipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Present for the Appellants - Shri R.Sudhinder, Adv.
Present for Respondent - Shri S.K.Panda, JCDR

FINAL **Order No.** A/330/2012-Ex (BR) **Dated :**__________

Per Ms. Archana Wadhwa:

The dispute involved in the present appeal is as regards the availability of Notification No.6/2002-CE, dtd. 01.03.02 as amended vide Notification No.47/2002-CE, dtd. 06.09.03 in respect of PSCC pipes falling under Chapter 68 of the 1st Schedule of Central Excise Tariff Act and cleared by the appellants during the period 09.06.04 to 15.10.04 under the claim of the above exemption Notification. As per facts on record, Sl.No.196A of the said Notification exempts pipes needed for delivery of water from its sources to the plant and from there to the storage facility. The pipes manufactured by the appellants were cleared under the work order dtd. 27.03.04 and were laid to make pipeline from Junia to Bhinay to carry treated water stored in first reservoir at Junia. Revenue by entertaining a view that the exemption under the said Notification was available only upto the first storage point proceeded against the appellants by way of issuance of a show cause notice (SCN) dtd. 03.10.06. In as much as the first storage facility of the water was at Junia and the pipes were used for making the pipeline from Junia to Bhinay, Revenue proposed to deny the exemption to the said pipes used between the stretch from Junia to Bhinay. Charges of mis-representation and suppression of facts were also made against the appellants and longer period was sought to be invoked.

2. The said SCN culminated into the impugned order passed by the Commissioner confirming the demand of duty of Rs.1,87,77,776/- along with confirmation of interest and imposition of penalty of identical amount.

3. After hearing both the sides, we find that the issue required to be decided is as to whether the exemption in terms of the said Notification would be applicable to the pipes used for delivery of water ~~from~~ upto Junia ~~to~~ as first storage point or the same would be applicable to all the points used for delivery of water upto the last point. We find that the issue is no more resintegra. The Tribunal in the case of Electrosteel Casting Ltd. reported in

2009(235)ELT757(Tri.-Kol.) while dealing with the Notification No.6/06-CE, dtd. 01.03.2000 has observed that the Notification merely talks about the storage facility and there is no restriction that the water should be delivered only to the first storage point. It, further, stands observed by the Bench that the Notification has to be interpreted to cover the pipes which were needed to deliver water not only up to the first storage point but also to the second and subsequent storage points such as elevated storage reservoir where water was further treated ~~for further treated~~ for chlorinisation. If the intention of the Govt. was to restrict the exemption for pipes upto first storage point, the Notification should have been accordingly worded from the beginning. In the absence of such a restriction, the respondents have executed the work order in respect of water treatment plant which are of service utilities and the concerned district Collectors have also given them the necessary certificates in respect of exemption Notification.

4. We, further, find that an identical dispute was the subject matter of Tribunal's decision in the case of Lanco Industries Ltd. reported in 2010(253)ELT70(Tri.-Bang.). After taking note of the Board's letter F.No.354/34/2008-TRU, dtd. 14.03.08 (which is also being relied upon by the ld. DR in the present case), we find that the Tribunal took note of the earlier decision in the case of Electrosteel Casting Ltd. and observed that the said decision was followed in the case of CCE&ST (Appeals-III v. IVRCL Infrastructures & Projects & Ors. (Final Order No.1431&1432/2008 dtd. 24.12.08) {2009(240)ELT606(Tri.-

Bang.)} and held that the pipes which are used for delivering water to various storage facilities are also eligible for the benefit of the said Notifications. Aggrieved by such orders, Revenue moved in Civil appeal to the Hon'ble Supreme Court in both the cases. Hon'ble Supreme Court vide orders dtd. 24.08.09 and 23.10.09, rejected the civil appeal filed by the Revenue. Accordingly, the pipes used for delivery of water from treatment plant to various storage facilities were held eligible for the benefit of Notification.

5. In as much as the issue is decided, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Rakesh Kumar)
Technical Member

RK-I