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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 **11/06/2012**

Appeal No. E/1287/2005 - EX[DB]

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

To :
C.C.E.MEERUT-I
UNIVERSITY ROAD MANGAL PANDAY NAGAR
MEERUT

C.C.E.MEERUT-I Appellant

Vs

M/S MUZAFFARNAGAR PIPE INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/659 **2012 EX|DB|** dated 06-6-12 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 MUZAFFARNAGAR PIPE INDUSTRIES LTD.
INDUSTRIAL ESATE MEERUT
ROAD MUZAFFARNAGAR

2. Adv. / Consult
NONE

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.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Appeal No.1287 of 2005
(Arising out of Order-in-Appeal No.04-CE/Appl/MRT-I/2005 dated 27.01.2005 passed by the CCE(A), Meerut-I)

Date of Hearing 06.05.2012

For approval and signature:
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?	

CCE, Meerut-I — Appellants

Vs.

M/s.Muzaffarnagar Pipe Industries Ltd. — Respondent

Present: Shri Nagesh Pathak, AR for the Appellant
Present None for the respondent

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

FINAL **ORDER No.** A/659/2012-EX(BR)

Per: Justice Ajit Bharihoke

This appeal is directed against the order of the Commissioner (Appeals) dated 27.1.2005 whereby he remanded the matter back to the adjudicating authority for passing fresh speaking order after supplying the copies of the duty paying documents to the respondents and affording him proper opportunity of personal hearing.

2. Briefly stated the facts relevant for disposal of this appeal are that the department served the respondent with show cause notice raising demand of Rs.34,76,613.80 with interest and also calling upon him to show cause as to why penalty be not imposed upon him.

3. The jurisdictional adjudicating authority after hearing the parties confirmed the demand with interest and also imposed penalty of Rs.1.25 lakh on the respondent. The appeal preferred by the respondent against the order in original was dismissed. Second appeal was also dismissed and ultimately the matter was set at rest by the apex court by dismissing the appeal against the order of the Tribunal. The respondent paid in cash a sum of Rs.1,65,553/- towards duty and Rs.1.25 lakh against penalty. Balance available in the cenvat credit account was also adjusted against the duty payment by the respondent. On accounting, the Assistant Commissioner, Central Excise Division-II, found that after adjustment of the cenvat credit still a balance of Rs.14,58,626.80 was outstanding against the respondent. Accordingly he wrote a letter dated 15.09.2004 to the respondent calling upon him to pay balance duty amount of duty within seven days, failing which the appropriate action for recovery of duty would be initiated. Against this letter, the respondent approached the Commissioner (Appeals) in appeal. The Commissioner (Appeals) after hearing the parties, remanded the matter back to the adjudicating authority to determine the balance excise duty required to be paid by the respondent.

4. Notices of the instant appeal sent to the respondent by registered AD post/speed post and time and again received back undelivered with the report that the firm is closed. From the aforesaid report, it appears that the respondent is deliberately avoiding to receive notice, particularly when the notice was sent at the correct address of the respondent. Thus, under the circumstances, we are constrained to proceed ex-parte against the respondent.

05. Shri Nagesh Pathak, learned AR for the department has submitted that the impugned order is liable to be set aside for the reason that the Commissioner (Appeals) has no power under the Act or the Rules to remand the case back for adjudication. Thus, he has urged us to set aside the impugned order.

06. We have considered the submissions made by Shri Nagesh Pathak, learned AR and perused the records. On perusal of the records, we find that the appeal before the Commissioner (Appeals) originated from the letter dated 15.09.2004 written by the Assistant Commissioner, Central Excise Division-II, Muzaffarnagar calling upon the respondent to pay balance duty demand of Rs.14,58,626.80 confirmed against the respondent. This letter cannot be termed as decision or order passed by the Assistant Commissioner, Central Excise Division-II, Muzaffarnagar.

7. Section 35F of the Central Excise Act, 1944 deals with the appeals to the Commissioner (Appeals) which reads thus:-

"Section 35F. Deposit, pending appeal, of duty demanded or penalty levied –

Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :

***Provided** that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.*

***Provided** further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.*

Explanation. — For the purposes of this section "duty demanded" shall include, —

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;

(v) interest payable under the provisions of this Act or the rules made thereunder."

8. On reading of the above, it is evident that appeals lies to the Commissioner (Appeals) under section 35F of the Act only against the order passed by a lower authority.

9. In the instant case, duty demand of Rs.34,76,613.80 with interest and penalty was confirmed against the respondent. Against

which he made payment to the extent of Rs.1,65,553/- and penalty of Rs.1.25 lakh. Balance amount was adjusted against the credit available to the respondent. The jurisdictional Assistant Commissioner had only asked the respondent to pay balance duty demand confirmed against him after giving adjustment in respect of the payment made and debit entry in the cenvat credit account. If at all the respondent is aggrieved of amount claim to be recoverable from him, an option was available to him to approach the Assistant Commissioner where this matter could be sorted out. Thus, instead of exercising this option, he straightforward filed appeal against the letter which by no means can be termed as appealable order. The Commissioner (Appeals), in our considered view, ought to have rejected the appeal on this count but he went on ~~passing~~ to pass a remand order, which in our view is not sustainable. Thus, the impugned order is set aside and the appeal is accepted.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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