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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 13/06/2012

Appeal No. E/2645/2007 - EX[DB]
E/S/2301/2007-EX

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

To :
M/S AUTO TUBE LTD.
VEDVYASPURI, PARTAPUR, MEERUT

M/S AUTO TUBE LTD. Appellant

Vs

C.C.E. MEERUT I **STAY ORDER NO. 907/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/662 2012 EX[DB]** dated 05-6-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.RAJAN NARAIN
IST FLOOR(REAR ENTRANCE),JEEVAN VIHAR BUILDING, 3,SANSAD MARG, N
DELHI.

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-I

Date of hearing/decision: 5.6.2012

Stay Application No.2301 of 2007 and Central Excise Appeal No.2645 of 2007

Arising out of the order in appeal No.133-134-Central Excise/MRT-I/2007 dated 26.6.2007 passed by Commissioner (Appeals) , Central Excise , Meerut I.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Auto Tube Ltd. ... Appellant

Vs.

C.C.E., Meerut I .. Respondent

Present for the appellant : Shri Ajay Agrwal, Advocate
Present for the respondent : Shri S.R. Meena, A.R.
STAY Order No. 907/2012-EX(BR)
FINAL Order No. A/662/2012-EX(BR)

Per Justice Ajit Bharihoke (Oral):

The appellant is a unit of Modi Rubber Ltd. (MRL). It is registered with Central Excise Department for manufacture of tubes, flaps falling under chapter 40 of the Central Excise Tariff Act, 1895.

2. M/s MRL during the period January, 1998 to September 2001 had supplied rubber compound to the appellant on payment of duty as raw material for manufacture of 'rubber slugs' on job work basis. The appellant after manufacturing 'rubber slugs' supplied the same to M/s JG Rubber, Modinagar (JGR) for converting the same on job work basis into flaps. The flaps so manufactured by M/s JGR was directly supplied by them to M/s MRL.

3. On scrutiny of the records of the appellant it was observed by the Department that the appellant during the period January 1998 to September 2001 had cleared 'rubber slugs' to M/s JGR at a suppressed value inasmuch as the appellant had purchased rubber compound from M/s MRL at the rate of Rs.34.67 per kg. and had supplied the finished product i.e. 'rubber slugs' to M/s JGR at the same price without adding the cost of manufacture and margin of profit to the price of rubber compound. Thus the department was of the view that by adopting the aforesaid modus operandi the appellant had short paid the excise duty. As such the appellant was issued a show cause notice raising excise duty demand of Rs.36,29,197/- on the differential price invoking extended period of limitation.

4. The jurisdictional Additional Commissioner after giving opportunity of being heard to the parties vide his order dated 30..11.2005 confirmed the duty demand of Rs.36,29,197/- against the appellant with appropriate interest. The adjudicating authority also imposed equal amount of penalty on the appellant and imposed penalty of Rs.5 lakhs on Shri Deepak Mathur, General Manager (Commercial) of M/s MRL.

5. The appellant being aggrieved of the order in original preferred an appeal. Commissioner (Appeals) accepted the plea of the appellant on the point of limitation to the extent that the demand raised by the show cause notice so far as it related to the period January 1998 to

August 1999 was time barred. However, he otherwise did not find merit in the appeal. Thus the appellate authority confirmed the duty demand for the period September 1999 to September 2001 subject to quantification and directed that the penalty would be leviable equal to the quantified duty. It is against the aforesaid impugned order passed by the Commissioner (Appeals), the appellant has preferred this appeal wherein he has also applied for waiver of condition of pre-deposit as a pre-condition to hearing of the appeal.

6. The matter was fixed for hearing for argument on stay application. After hearing the parties and going through records, we find that appeal itself can be disposed of at this stage. Accordingly, with the consent of the parties after waiving the condition of pre-deposit, we have proceeded to hear the appeal.

7. The sole controversy for consideration in this appeal is whether or not the appellant during the period in question had cleared 'rubber slugs' to M/s JGR by suppressing the value of the goods cleared to evade payment of excise duty.

8. Learned Counsel for the appellant submits that the impugned order is liable to be set aside for the reason that the Commissioner (Appeals) had decided the matter without looking into the documents filed by him in appeal to show that the adjudicating authority has erred in holding that the appellant supplied the finished product to M/s JGR at the rate on which he has purchased rubber compound. In support of this contention, learned Counsel for the appellant has drawn our attention to photocopies of various invoices pertaining to the period in question to show that in fact the appellant received rubber compound from M/s MRL@ Rs.27.94 per kg. and he supplied the finished product i.e. 'rubber slugs' to M/s JGR @ Rs.34.67 per kg. Learned Counsel has thus summed up that impugned order has been

passed without taking into consideration the evidence furnished by the appellant.

9. Learned Shri S.R. Meena, representative of the Department has conceded that the above referred invoices referred to by the appellant were filed during the course of appeal, but have not been considered by the appellate authority while passing the impugned order. Learned A.R. however submits that the aforesaid documents were not produced during adjudication proceeding, as such, there is an issue of genuineness of the document. Ld. A.R. has fairly conceded that it would serve the interest of justice if the matter is remanded back to the adjudicating authority for de novo adjudication after giving opportunity to the appellant to prove the relied upon documents and after giving opportunity of being heard to the appellant.

10. In view of the factual matrix discussed above and the concession given at the bar, we set aside the impugned order and remand the matter back to the adjudicating authority with the direction that he shall decide the matter afresh after giving opportunity to the appellant to prove the documents relied upon by him and after hearing the appellant, all the contentions of the parties are kept open.

11. Appeal as well as stay application are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/