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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/1088/2005 - EX[DB] Date **13/06/2012**

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S U.P.ENGINEERING CORPORATION Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/674 2012 EX[DB]** dated 31-5-12 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 U.P.ENGINEERING CORPORATION
D-11, SITE-III, PANKI INDUSTRIAL
AREA, KANPUR

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

<u>COURT NO. I</u>

<u>DATE OF HEARING/DECISION : 31/05/2012.</u>

Excise Appeal No. 1088 of 2005

CCE, Kanpur — Appellant

Versus

M/s U.P. Engineering Corporation — Respondent

[Arising out of the Order-in-Appeal No. 616-CE/APPL/KNP/2004 dated 28/11/2004 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities?	:

<u>Appearance</u>

Shri Bharat Bhushan, Authorized Representative (DR) – for the Appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/674/2012-EX(BR)

Per. Shri Rakesh Kumar :-

The respondent manufactured ballot boxes chargeable to Central Excise Duty under sub-heading 8303.00 of the Central Excise Tariff. During May and June 2000, the respondent supplied 17605 ballot boxes to the State Election Commission in terms of their contract with the Commission @ Rs. 439/- per ballet box and as per Clause 5 of the supply order dated 18/2/2000 in pursuance of which the ballot boxes had been supplied, the price of Rs. 439/- included the handling and transportation charges, excise duty and trade tax. The appellant after abatement of the element of excise duty, sales tax and transportation and handling charges paid duty on the assessable value of Rs. 345/- per box. Subsequently, in July 2001 the respondent received an additional amount of Rs. 24,14,434/- towards trade tax reimbursement from the Election Commission in addition to their contract price. The department was of the view that since the respondent had received the reimbursement of sales tax subsequently, the initial price of Rs. 439/- per ballot box did not include the sales tax and, hence, while calculating the assessable value from the price of Rs. 439/-, the abatement of sales tax @ Rs. 20/- per box was wrong. It is on this basis that show cause notice dated 3/6/02 was issued to the respondent for recovery of differential duty of Rs. 48,060/- alongwith interest and also for imposition of penalty. The show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 23/1/03 by which the duty demand as made in the show cause notice was confirmed alongwith interest and penalty of equal amount was imposed on respondent. On appeal to Commissioner (Appeals), the Commissioner (Appeals), however, vide order-in-appeal dated 28/11/04 set aside the demand against which this appeal have been filed by the department.

2. None appeared for the respondent. Heard Shri Bharat Bhushan, learned SDR who pleaded the price of Rs. 439/- per ballot box as mentioned in the supply order did not include the element of sales tax, that this fact is clear from the fact that subsequently the Election Commission reimbursed the element of sales tax and from the letter of the Commissioner, it is clear that the initial price mentioned in the supply order did not include the element of sales tax, that in view of this, the abatement of sales tax from the price of Rs. 439/- per ballot box was wrong and, hence, the duty had been short paid by the respondent whose demand has been correctly confirmed by the Assistant Commissioner. He, therefore, pleaded that the impugned order setting aside the duty demand is not correct. He pleaded that the appellant have suppressed the relevant facts from the department and, hence, the extended period had been correctly invoked.

3. We have carefully considered the submissions of learned SDR and perused the records.

4. It is not disputed that the supply order dated 18/2/2000 in pursuance of which the respondent had supplied the ballot box to the Election Commission mentioned the price as Rs. 439/- per box which included the handling and transportation charges, element of excise duty and the trade tax. We are, therefore, of the view that initially the respondent had correctly claimed abatement of the sales tax, as supplied order itself mentioned that the price includes the element of sales tax. It is only subsequently that the Election Commission clarified that the initial price of Rs. 439/- did not include the element of sales tax and reimbursed the sales tax separately. We are, therefore, of the view there was no suppression of any fact on behalf of the respondent and, as such, the duty demand raised vide show cause notice dated 3/6/02 was time barred and same has been correctly set aside by the Commissioner (Appeals). We, therefore, do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Dictated and pronounced in the open court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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