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TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

STAY Application No. : E/Stay/844/2012
Appeal No. : E/697/2012-EX[DB]

Dated: **04/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
ASHOKA WIRE INDUSTRIES
27/4, Gali No 3, Friends Colony,
Shahdara, Delhi.

(Appellant)

ASHOKA WIRE INDUSTRIES

VS

C.C.E. DELHI II

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1193/2012-EX[DB]**, Stay/~~MISC~~ Order No. **SO/1639/2012** and dated **21/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. DELHI II
C.R. Building, I.P. Estate, New Delhi
110002

2. Advocate(s) / Consultant(s):
KAMALJEET SINGH
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

Date of Hearing/Decision:21.09.2012

Excise Stay Application No.844 of 2012
In Excise Appeal No.697 of 2012

(Arising out of Order-in-Appeal No.06 to 07/CE/D-II/2012 dated 24.1.2012 of the Commissioner of Central Excise (Appeals), Delhi-II)

M/s. Ashoka Wire Industries ....Appellants

Vs.

CCE, Delhi-II ...Respondent

Appearance: Shri Kamaljeet Singh, Advocate for the appellant.
Shri Sanjay Jain, DR for the respondent.

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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

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CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 1639/2012-Ex(BR)
FINAL Order No.A/1193/2012-Ex(BR) Dated:21.09.2012

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of dues, we proceed to decide the appeal itself inasmuch as the identical issue stands decided by the earlier order of the Tribunal.

2. The appellant is a manufacturer of copper wires and availed cenvat credit on copper ingots on the basis of invoices issued one M/s. V.K. Metal Works, Jammu. Revenue has denied the said cenvat credit on the ground that the copper ingots are not supplied by M/s. V.K. Metal Works, Jammu as the factory of M/s. V.K. Metal Works not in existence and that there was no manufacturing activity was going on in the factory of M/s. V.K. Metal Works. It has also come on record that show cause notice stands issued to M/s. V.K. Metal Works but the same is still pending.

3. We find that an identical issue was decided by the Tribunal in the case of M/s. Balar Marketing Pvt. Ltd. vide Final Order No.A/336-337 of 2012-Excise dated 15.3.2012 by observing as under:-

> "8. We have considered the submissions on behalf of the parties and perused the record. It appears that the outcome of the demand against the appellants is dependent upon the outcome of the adjudication proceedings against the supplier, M/s. V.K. Metals Works which matter is still pending. Otherwise also the finding of the original adjudicating authority is based upon statement of the employee of

M/s.V.K. Metals Works. Shri Shankar Lal Gupta was not offered for cross-examination and test veracity of his statement to the appellants. This approach adopted by original adjudicating authority is against the principles of natural justice. Therefore, we find ourselves unable to sustain the original adjudication order as also the impugned order passed by the Commissioner. Appeals are therefore allowed and the matter is remanded to the original adjudicating authority for deciding afresh after giving an opportunity to the appellants to cross-examine the witnesses and having regard to the finding against M/s. V.K. Metals Works by the Commissioner, Jammu."

4. By following the above decision, we set aside the impugned order and remand the matter to the original adjudicating authority in terms of the directions contained in the earlier order of the Tribunal in the case of M/s. Balar Marketing Pvt. Ltd. The stay application as also the appeal stand disposed of in the above terms.

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.