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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 15/05/2012

Appeal No. E/2568/2011 - EX[DB]
E/S/3346/2011-EX

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

To :
M/S SADHU FORGINGS LTD.
PLOT NO. 140, SECTOR-24, FARIDABAD (HARYANA)

M/S SADHU FORGINGS LTD. Appellant
Vs
C.C.E. DELHI IV Respondent

STAY ORDER NO.806/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/567 2012 EX[DB]** dated 09-5-12
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.N.L.JANGIR
1530,SECTOR21-D,FARIDABAD

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: 9.5.2012

Stay Application No.3346 of 2011 and
Central Excise Appeal No.2568 of 2011

Arising out of the order in appeal No.60/CE/Appl/DLH-IV/2010 dated 27.7.2011 passed by Commissioner of Central Excise (Appeals), Delhi IV

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?	

Sadhu Forgings Ltd. .. Appellant

Vs.

Commissioner of Central Excise, Delhi IV .. Respondent

Present Shri N.L. Jangir, Advocate for the appellants

Present Shri R.K. Verma , A.R. for Revenue

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

STAY order No 906/2012-Ex (DB)
FINAL Order No. A/ 567/2012- Ex(DB)

Per Justice Ajit Bharihoke (Oral):

This is an application seeking waiver of condition of pre-deposit of duty demand to the extent of Rs.82,937/- with interest and penalty of equal amount.

2. The appellant company is engaged in the manufacture of motor parts which are excisable items. The appellant during the relevant period have been supplying motor parts to Maruti Suzuki India Ltd. (MSIL) in terms of purchase orders and was clearing the goods on payment of excise duty at the transaction value mentioned in the purchase order. On inspection of the spare parts division of MSIL, the Department found that the goods supplied by the appellant to MSIL were available in the spare part division in packed form with M.R.P. higher than rate mentioned in the purchase order. Statement of Shri H. Ramakrishnan, Deputy Manager (Finance) of MSIL was recorded wherein he stated that MSIL have received those goods from Sadhu Forging Ltd. in packed condition with MRP label affixed thereon. Thus, the Department on the premise that the appellant ought to have paid excise duty under Section 4A of the Central Excise Act on MRP basis served upon show cause notice. The show cause notice was contested and the appellant took the defence that he had supplied the goods to MSIL in unpacked condition, as such, he had rightly paid the excise duty as per the transaction price mentioned in the purchase order. This plea did not find favour with the adjudicating authority. Accordingly, the adjudicating authority vide order in original dated 12.8.2010 confirmed the duty demand to the tune of Rs.82,937/- and directed the appellant to pay interest thereon and also imposed penalty of equal amount. The appellant preferred appeal against the impugned order. The Commissioner (Appeals) vide order in appeal dated 27.7.2011 dismissed the appeal and confirmed the order in original. The appellant has preferred appeal against the order in appeal wherein stay application has been moved.

3. Learned Counsel for the appellant submits that order in original as also the Commissioner (Appeals) are not sustainable in law for the reason that those orders have been passed solely on the basis of the

statement of Shri H. Ramakrishnan, Deputy Manager (Finance) of MSIL without making any enquiry at the end of the appellant company or without looking into the actual contract of between the parties. Thus it is submitted that the impugned order is flawed and there is prima facie case for waiver of condition of pre-deposit.

4. Shri R.K. Verma, A.R. for Department has argued in support of the order in original as well as the impugned order wherein the statement of Shri H. Ramakrishnan, inter alia is reproduced as under:

> *"....................who in his statement dated 2.12.2008 tendered before the Superintendent of Central Excise under Section 14 of the Central Excise Act, 1944 has stated that for the Motor Vehicle Parts supplied by their venders to SPD of MSIL, duty had not been discharged under Section 4A of the CEA, 1944. He further admitted that the spare parts received from their venders for SPD were received in packed condition in which these were to be sold in retail sale the label of MRP was affixed on the packages which were supplied by MSIL to its venders.*

It is submitted that from the aforesaid statement, it is apparent that the appellant was supplying the goods in question to MSIL in packed condition with MRP label affixed on the same. Thus, it is contended that entire demand has rightly been confirmed in accordance with Section 4A of the Central Excise Act, 1944 and there is no infirmity in the impugned order. As such, there is no case for waiver of condition of pre-deposit.

5. We have considered the rival contentions and perused the record. The appellant has placed on record the photocopy of the sample purchase orders under which the goods were supplied. On perusal of these purchase orders, it is noted that on top of it, it is mentioned "*Purchase order amendment*" and at the bottom it is written in small print "*Other terms and conditions of the purchase order remain unaltered*". From this , it is prima facie apparent that there actually

was a basic contract of supply between the parties and these purchase orders have been placed upon the appellant at the amendment rates makes it clear that other terms and conditions remain unaltered. Sample purchase order has 6 columns. Column No.1 gives 'serial number', column No.2 gives 'basic rate', column No.3 'part number', column No.4 provides 'value and quantity', column No.5 & 6 relate to 'effect date' and 'valid upto'. From these sample purchase orders, one cannot make out whether these purchase orders were for supply of parts in packed condition with MRP affixed on the package or in the raw condition. Even the photocopy of invoices placed on record do not give a clue whether the spare parts were to be supplied to he appellant in packed condition. Thus, it is apparent that the documents made available are not helpful for coming to the conclusion that on the question as to whether the spare parts were supplied in raw condition or in packed condition. Only basis for the order in original and the order in appeal is the untested statement of Shri H. Ramakrishnan, Deputy Manager (Finance) which can be termed as self-supporting statement for the reason that if the goods were supplied by the appellant in raw condition then the duty incidence on MRP basis would have been shifted to MSIL. Thus in our considered view, the aforesaid untested statement of Shri H. Ramakrishnan, Deputy Manager (Finance) without any corroborative evidence is not sufficient to confirm the duty. In our view, the appellant has been able to make out a case for waiver of condition of pre-deposit of duty, penalty and interest.

6. At this stage Shri R.K. Verma, A.R. for the Revenue has fairly conceded that the impugned order is liable to be set aside as it is based upon the statement of Shri H. Ramakrishnan, Deputy Manager (Finance) of MSIL who was not subjected to cross-examination by the appellant and also the Authority concerned has not bothered to look

into the contract of supply between the parties which would have clarified the facts. Learned A.R. submits that instead of deferring the decision on this appeal, the appeal may be decided by remanding the matter back to the adjudicating authority for de novo adjudication in the light of the original contract of supply of the goods between the parties and other documents, if any, produced by the appellant and after permitting the appellant to cross-examine Shri H. Ramakrishnan, Deputy Manager (Finance) of MSIL.

7. In view of the above, we accept the appeal and remand the matter back for de novo adjudication on consideration of the supply contract between the parties and other documents if any produced by the appellant, after affording opportunity of cross-examination of Shri H. Ramakrishnan to the appellant.

8. Appeal as well as stay application are disposed of.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/