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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 **04/05/2012**

Appeal No. E/1898/2011 - EX[DB]
E/S/2508/2011-EX

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

To :
M/S MET TRADE INDIA LTD.
152, SICOP INDUSTRIAL AREA, KATHUA (J&K)

M/S MET TRADE INDIA LTD. Appellant
Vs
C.C.E. JAMMU Respondent

STAY ORDER NO. 739/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/516** **2012** **EX[DB]** dated 30-4-12 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. JAMMU
OB-32, RAIL HEAD COMPLEX,
JAMMU - 180012.

2. Adv. / Consult SH. PRAVIN SHAMA, ADV.,
KF-84, NEW KAVI NAGAR,
GHAZIABAD -2

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: 30.4.2012

Stay Application No.2508 of 2011 and
Central Excise Appeal No.1898 of 2011

Arising out of the order in original No.01/CE/Commissioner/J&K/2011 dated 21.1.2011 passed by Commissioner of Central Excise, Jammu.

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?	

Met Trade India ... Appellants/applicants

Vs.

C.C.E., Jammu .... Respondent

Present Shri Praveen Sharma, Advocate for the appellants.

Present Shri N. Pathak, A.R. for the respondent.

STAY order No. 739/2012-Ex(BR)
FINAL Order No. A/516/2012-Ex(BR)

Per Mr. Rakesh Kumar (Oral):

Appellant has already paid Rs.1 lakh towards cost in terms of Misc.Order No.276/2012-Ex(BR) dated 20.3.2012 as confirmed by the learned Departmental Representative and thus the delay in filing of appeal stands condoned.

2. The appellant's unit is located in specified area of the State of Jammu & Kashmir and they are availing the benefit of Notification No.56/2002-CE dated 14.11.2002 (as amended). They manufacture tin alloys and pure tin from the scrap. They have cleared part of the goods manufactured by them to their own units located in Dadri (UP) and Sonepat (Haryana) for their captive consumption and the duty on their clearances was being paid on 110% of the cost of production in terms of the provisions of Rule 8 of Central Excise Valuation Rules, 2000. The appellant, on account of fluctuation of the metal prices, were determining cost of production on monthly basis. According to the Department, the cost of production should be the average cost during the financial year and it is on this basis, that the duty demand of Rs.1,43,32,544/- was confirmed against the appellant along with interest and penalty of Rs.30 lakhs was imposed under Rule 25(1) of Central Excise Rules, 2002 by Commissioner , Central Excise vide order in original dated 25.1.2011. Against this order, the appeal with stay application has been filed.

2. Heard both sides. Though the matter is listed for hearing of stay application, we are of the view that since a short issue is involved in this appeal, there is no point in keeping the matter pending and after dispensing with the requirement of pre-deposit and with the consent of both the sides, the matter was heard for final disposal.

3. Shri Praveen Sharma, Advocate, the learned Counsel for the appellants has assailed the impugned order on the ground that the Department has quantified the average cost of production on annual basis and compared it with the value of clearances made during the a particular month, which is incorrect. It is submitted that since the price of raw materials used in manufacture of product is highly volatile in the market, there are sharp fluctuations of price on day to day basis, the method applied by the Department of comparing average cost of

production of earlier five months of the financial year with the value of clearances made during the period on monthly basis is wrong. It is also pleaded that on account of given reasons, the Appellant could not file reply to the show cause notice and the matters were adjudicated by the Commissioner without considering their reply to the show cause notice and without personal hearing. It is, therefore, urged that the impugned order be set aside and the matter be remanded for de novo adjudication after considering the Appellant's submission regarding determination of the cost of production.

4. Learned Departmental Representative has no objection if the matter is remanded to the adjudicating authority for de novo adjudication.

5. We have carefully considered the submissions from both the sides and perused the records. From the impugned order passed by the Commissioner, it is clear that the same is an ex parte order passed without waiting for the Appellant's reply to the show cause notice and without hearing them in person. According to the Appellant, they are in a position to present the requisite record to show that the duty was paid by them on the value determined in terms of the provisions of Rule 8 of the Central Excise Valuation Rules, 2000.Accordingly, the impugned order is set aside and the matter is remanded to the adjudicating authority for de novo adjudication after hearing the Appellant. The appeal and the stay application stand disposed of as above..

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/