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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/3375/2010,3517/2010 - EX[DB]
E/S/3168,3307/2010-EX

Date **14/05/2012**

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

To :
M/S R.B. INDUSTRIAL FABRICATOR PVT. LTD.,
PLOT NO. 62, SMIE 20/2, MATHURA ROAD,
FARIDABAD, HARYANA.

M/S R.B. INDUSTRIAL FABRICATOR PVT. LTD., Appellant

Vs

C.C.E. DELHI IV Respondent

STAY ORDER NO. 779-780/12-EX

I am directed to transmit herewith a certified copy of **Final order No. A/544-545 2012 EX[DB]** dated 01-5-12 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.PRIYADARSHI MANISH,ADV
27, VIDYUT NIKUNJ, PLOT NO 112, I.P.EXTENSIOIN, PATPARGANJ, 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
14. RAMESH CHANDER BONDWAL
C/O M/S R.B. INDUSTRIAL FABRICATORS PVT. LTD.,
PLOT NO. 62, SMIE 20/2, MATHURA ROAD, FARIDABAD, HARYANA.

Assistant Registrar
(Excise Appeal Branch)

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

Date of Hearing/Decision:01.5.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. 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 should 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 Departmental authorities?	

Excise Stay Applications Nos.3168 and 3307 of 2010
In Excise Appeals Nos.3375 and 3517 of 2010

(Arising out of Order-in-Appeal No.68-69/CE/Appl/DLH-IV/2010 dated 3.6.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-IV, Faridabad).

M/s.R.B. Industrial Fabricators Pvt. Ltd. ...Appellant
Shri R.C. Bondwal

Vs.

CCE, Delhi-IV ...Respondent

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

Appearance:

Shri Priyadarshi Manish, Advocate for the appellant.
Shri I.Beg, AR for the respondent.

STAY Order No. 779-780/2012-Ex(BR)
FINAL Order No.A/544-545/2012-Ex(BR)

Per Justice Ajit Bharihoke:

Excise Stay Applications Nos.Excise Stay/3168 & 3307 of 2010

The appellants, M/s. R.B. Industrial Fabricator Pvt. Ltd. (Appellant No.1) and Shri R.C. Bondwal (Appellant No.2) have preferred separate appeals against the impugned order of the Commissioner (Appeals). Along with the appeals, they have moved applications under Section 35 F of the Central Excise Act seeking waiver of the condition of pre-deposit pending appeals.

2. Perusal of the impugned order would show as regards the appellant, M/s. R.B. Industrial Fabricator Pvt. Ltd. (Appellant No.1) no duty demand, interest and penalty have been confirmed by the Commissioner (Appeals) as he has directed the jurisdictional Asstt. Commissioner to scrutinize the record made available to him by the Appellant No.1 and quantify the cevat credit admissible to him as also differential excise duty and the penalty to be imposed on Appellant No.1. Thus, in

our considered view, the application of the Appellant No.1 is pre-mature. It is accordingly dismissed.

3. As regards Appellant No.2, it is submitted by ld. Counsel for the appellant that the Commissioner (Appeals) have ~~considered~~ committed a grave error in dismissing his appeal challenging the penalty of Rs.15 Lakhs imposed upon him ignoring the fact that as per the requirement of Rule 25 of the Central Excise Rules, 2002, the maximum amount of penalty on the Appellant No.2 can not exceed the amount of excise duty payable by the Appellant No.1. Ld. Counsel submitted that since the excise duty payable by the Appellant No.1 is yet to be quantified, it cannot be said that the penalty of Rs.15 Lakhs imposed on the Appellant No.2 is within the maximum limit prescribed under Rule 25. We are convinced with this submission. Accordingly, the condition of pre-deposit of penalty amount by Appellant No.2 is waived.

Excise Appeals Nos.E/3375 & 3517 of 2010

4. Ld. Counsel for the appellants submits that though he has taken other pleas, the order of the Commissioner (Appeals) is not sustainable in law for the reason that it is an in-complete, unexecutable order. Expanding on the arguments, ld. Counsel for the appellant has drawn our attention to the operative portion of the order and submitted that the Commissioner (Appeals) while deciding the appeal

have directed the jurisdictional Asstt. Commissioner to adjudicate upon the admissibility of cenvat credit available to the Appellant No.1 on the basis of the record made available by the appellants and thereafter quantify admissible cenvat credit and the differential excise duty paid. Ld. Counsel submits that quantification of admissible cenvat credit and differential of excise duty payable by the jurisdictional Asstt. Commissioner, Central Excise would amount to adjudication which is an appealable order as per Section 35B of the Central Excise Act, as such proper course available to the Commissioner (Appeals) was to remand the matter to the jurisdictional Asstt. Commissioner.

5. As regards the appeal of Shri R.C. Bondwal (Appellant No.2), ld. Counsel has submitted that dismissal of his appeal challenges the penalty of Rs. 15 Lakhs without clear quantification of the excise duty payable by the Appellant No.1, M/s. R.B. Industrial Fabricator Pvt. Ltd., is against the spirit of Rule 25 of the Central Excise Rules because penalty under Rule 25 cannot exceed the duty demand, which is yet to be quantified.

6. Shri I. Beg, Authorised Representative for the respondent on the contrary has argued in support of the impugned order and submitted that it is a complete executable order and the exercise supposed to be conducted by the jurisdictional Asstt. Commissioner is an administrative exercise of scrutiny of record and calculating cenvat credit admissible to the appellant as also the differential excise

duty after adjustment of the admissible cenvat credit. Thus, ld. Authorised Representative for the department has pressed for dismissal of both the appeals.

7. In order to appreciate the rival contentions, it would be helpful to have a look on the operative portion of the impugned order:-

"10. In view of the above, I pass the following order:-

(i) The benefit of Cenvat credit of duty paid on inputs used in the manufacture of finished goods is permitted, subject to payment of appropriate Central Excise Duty on clearance of such goods. The benefit of Cenvat credit to the appellants is allowed subject to verification by the jurisdictional Assistant Commissioner of Central Excise about its admissibility on the basis of original records to be produced by the appellants and after adjustment of the amount of admissible cenvat credit, the differential amount of central excise duty will be calculated and intimated to the appellants for payment thereof forthwith along with interest as due in terms of Section 11 AB of the Central Excise Act, 1944.

(ii) The amount of penalty imposed on M/s. R.B. Industrial Fabricators (P) Ltd., Faridabad (Appellant No.1) under Section 11 AC of the Act, would be equal to the re-calculated amount of duty.

(iii) I set aside the penalty of Rs.15,00,000/- imposed under Rule 25 of the Central Excise Rules, 2002.

(iv) I uphold rest of the impugned Order-in-Original.

(v) I reject the appeal filed by appellant no.2."

8. Bare reading of the above makes it clear that this is not a complete executable order and in order to make it an executable order, the jurisdictional Asstt. Commissioner, Central Excise is required to undertake an exercise of scrutiny of record made available by the appellant and decide on the admissibility of cenvat credit claimed by the appellants and on that basis, to quantity the differential excise duty payable by the appellants, the aforesaid exercise supposed to be carried out by the jurisdictional Asstt. Commissioner is nothing but the adjudication on the claim of the appellants for cenvat credit. Therefore, in our considered view, the Commissioner (Appeals) ought to have remanded the matter back to the jurisdictional Asstt. Commissioner vide a clear order. Further, Rule 25 of the Central Excise Rules, 2002 provides that penalty under this Rule cannot exceed the excise duty payable by the assessee. In view of the impugned order, the excise duty is yet to be assessed and confirmed, therefore, dismissal of appeal of Shri R.C. Bondwal challenging the penalty of Rs.15 Lakhs by no means is justified because a possibility can not be ruled out that after adjudication by the jurisdictional Asstt. Commissioner, the excise duty payable by said appellant may be less than the penalty of Rs.15 Lakhs imposed vide order-in-original.

9. In view of the above, we find it difficult to sustain the impugned order of the Commissioner (Appeals). Accordingly, both the appeals are accepted. The impugned order is set aside and the matter is remanded back to the jurisdictional

Asstt. Commissioner to adjudicate upon the admissibility of cenvat credit to the appellants after giving them opportunity of producing the relevant record and being heard. Thereafter, the jurisdictional Asstt. Commissioner shall quantify the differential excise duty if any payable by the appellants and decide on the penalty to be imposed on the appellants.

10. Appeals are disposed of accordingly.

[pronounced in the open court]

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.