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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/766/2011-EX[DB], E/785/2011-EX[DB]

Dated: **27/08/2012**

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

**CEC SOMA JV,**
RACE COURCE METRO STATION,
TUGLAK CRESCENT TUGLAK
ROAD, NEW DLEHI.

(Appellant)

**CEC SOMA JV,**

**VS**

(Respondent)

**C.C.E. DELHI I**

I am directed to transmit herewith a certified copy of Final Order No. **A/964-965/2012-EX[DB]** dated **09/08/2012** 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 I**
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

**2. Advocate(s) / Consultant(s):** MS. MEKHLA ANAND & SH. SUNNY SHARMA ADV.
**NAGESWAR RAO, ADVOCATE**
AMARCHAND MANGALDAS SURES
A. SHROFF & CO. 216, OKHLA
INDUSTRIAL ESTATE, PHASE-III,
NEW DELHI-110020

**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. Office Copy
13. Gaurd File

**Assistant Registrar**
**EXCISE Appeal Branch**

14. **MR. JAMES C.S. SWANSON**
RACE COURSE METRO STATION,
TUGLAK ROAD, NEW DELH.

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing/decision: 9.8.2012**

**Central Excise Appeal No.766 & 785 of 2011**

Arising out of Order in original No.30/D-I/2010 dated 23.12.2010 passed by the Commissioner , Central Excise , Delhi I.

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? | |

CEC Soma JV ... Appellant
James C.S. Swanson

Vs.

C.C.E., Delhi I .. Respondent

Present for the appellant : Ms. Mekhla Anand with Shri
Shri Sunny Sharma, Advocates

Present for the respondent : Shri R.K. Verma, A.R.

FINAL Order No. A/964-965/2012-Ex(BR)

Per Mr. Rakesh Kumar(Oral):

The respondent manufacture pre-cast rings for use in the tunnels in which metro trains ply. The goods had been supplied by the respondent to DMRC in terms of their contract with them. The period of dispute is from 19.2.2009 to 6.7.2009. The Department being of the view that pre-cast rings are chargeable to central excise duty under sub-heading 68109100 of the Central Excise Tariff Act, 1985, issued a show cause notice for demand of duty amounting to Rs.1,99,40,800/- along with interest and also imposition of penalty on them as well as Shri James CS Swanson, Project Leader of M/s CEC Soma JV. Show cause notice was adjudicated by the Commissioner vide order in original dated 23.12.2010 by which above mentioned duty demand as made in the show cause notice, was confirmed along with interest, and besides this while penalty of equal amount was imposed on the appellant company M/s CEC Soma JV under Section 11AC of Central Excise Act, 1944, penalty of Rs.10 lakhs was imposd on Shri James CS Swanson under Rule 26 of the Central Excise Rules, 2002. Against this order of the Commissioner, these appeals have been filed.

2. Heard both the sides.

3. Both the sides agree that in respect of all the goods of chapter 68 of CETA, 1985 except the goods covered by chapter sub-heading 6804, 6805, 6811, 6812 and 6813 manufactured at site during the period from 1.3.06 to 6.7.09 for use in construction at site, the Central Government has issued a Notification No.01/2011-CE(NT) dated 17.2.2011 under section 11C of the Central Excise Act, 1944 directing that no duty is required to be paid in respect of the same. Taking note of this notification issued under Section 11C, the Tribunal vide final order No.269-296/2011-Ex, dated 4.3.2011 in respect of the appeals filed by this appellant and other appellants where identical issue was involved has set aside the duty demand and penalties. Appeals filed by the Department against this order of the Tribunal have been dismissed by Hon'ble Delhi High Court vide order dated 5.9.2011 Since the issue involved in these appeals is the same, in view of the Notification issued by the Central Government, no duty is chargeable.

The impugned order is , therefore, not sustainable. The same is set aside. The appeals are allowed.

(Justice Ajit Bnarihoke)
President

(Rakesh Kumar)
Technical Member

scd/