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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/1075/2006-EX[DB], E/1076/2006-EX[DB], E/1077/2006-EX[DB], E/1078/2006-EX[DB], E/1079/2006-EX[DB], E/1080/2006-EX[DB]

Dated: **25/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
CCE-NOIDA.
B-123,SECTOR-5, NOIDA.

CCE-NOIDA. (Appellant)

VS

SHRI SAMEER GUPTA,
DIRECTORAPOLLO PIPES(P)LTD
& V.S.EXIM(P)LTD.37, HARGOVIND
ENCLAVE, VIKAS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/860-865/2012-EX[DB]** dated **18/07/2012** 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. <u>Respondent</u>
SHRI SAMEER GUPTA,
DIRECTORAPOLLO PIPES(P)LTD &
V.S.EXIM(P)LTD.37, HARGOVIND
ENCLAVE, VIKAS MARG,N. DELHI

2. **Advocate(s) / Consultant(s):** SH. M.P. SINGH, ADV., C/O RESPONDENT.

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

P.T.O.-2,

14. **BIHAR TUBES LTD**
BIHAR TUBES LTD A-19,
INDUSTRIAL AREA, SIKANDRABAD

15. **APOLLO PIPES (P LTD.).**
D-20 & E-6, INDL. AREA
SIKANDRABAD.

16. **V.S. EXIM (P)LTD.**
A-20INDL. AREA, SIKANDRABAD.

17. SHRI SANJAY GUPTA, MD M/s
BIHAR TUBES LTD. 37, HARGOVIND
ENCLAVE, VIKAS MARG, NEW
DELHI.

18. SHRI VINAY GUPTA, DIRECTOR M/s
APOLLO PIPES(P)LTD & M/s V.S.
EXIM (P)LTD.37, HARGOVIND
ENCLAVE, VIKAS MARG,NEW
DELHI.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING/DECISION : 18/07/2012.

Excise Appeal No. 1075 of 2006

CCE, Noida — Appellant

Versus

M/s Bihar Tubes Ltd. — Respondent

Excise Appeal No. 1076 of 2006

C.C.E., Noida — Appellant

Versus

M/s Apollo Pipes P. Ltd. — Respondent

Excise Appeal No. 1077 of 2006

C.C.E., Noida — Appellant

Versus

M/s V.S. Exim P. Ltd. — Respondent

Excise Appeal No. 1078 of 2006

C.C.E., Noida — Appellant

Versus

Shri Sanjay Gupta, M.D. — Respondent

Excise Appeal No. 1079 of 2006

C.C.E., Noida — Appellant

Versus

Shri Vinay Gupta, Director — Respondent

Excise Appeal No. 1080 of 2006

C.C.E., Noida — Appellant

Versus

Shri Sameer Gupta, Director — Respondent

[Arising out of the Order-in-Appeal No. 126-131/CE/APPL/Noida/ 2005 dated 23/12/2005 passed by The Commissioner (Appeals), Central Excise, Noida.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities? :

Appearance

Shri I. Beg, Authorized Representative (DR) – for the Appellant.

Shri M.P. Singh, Advocate – for the Respondents.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. A/860-865/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

The department has preferred these appeals against order-in-appeal No. 126-131/CE/APPL/Noida/2005 dated 23rd December 2005 whereby the Commissioner (Appeals) partially accepted the appeal and set aside the order-in-original of Additional Commissioner relating to confirmation of demand of differential duty of Rs. 24,76,143/- on M/s Apollo Pipes Pvt. Ltd. and Rs. 18,85,993/- on M/s V.S. Exim P. Ltd. by clubbing their volume of clearance on the premise that those two companies were run and manage by the same management. The Commissioner (Appeals) consequently set aside the penalties imposed on M/s Bihar Tubes Ltd., M/s Apollo Pipes P.

Ltd., M/s V.S. Exim P. Ltd., Shri Sanjay Gupta, M.D., Shri Vinay Guptam, Director and Shri Sameer Gupta, Director.

2. Shri M.P. singh, Advocate appearing for the respondents at the outset had taken a preliminary objection that these appeals are not maintainable as proper authorisation as envisaged under Section 35B (2) of the Central Excise Act, 1944 was not obtained before filing of the appeals.

3. On perusal of the record of respective appeals, we find that authorisation under Section 35B (2) of the Central Excise Act, 1944 annexed to the memorandum of appeal is signed only by Shri S.K. Goyal, Commissioner, Central Excise, Noida. There is annexure to the authorisation wherein details of the facts of the case and the grounds of appeal are mentioned, which is also signed only by Shri S.K. Goyal, Commissioner, Central Excise, Noida. Neither the authorisation nor the annexure to the authorisation bears signatures of the other Commissioner who purportedly was member of the Committee of Commissioners constituted vide Notification No. 25/2005-CE (NT) dated 13/5/05.

4. Learned Shri I. Beg, DR for the appellant tried to explain this infirmity by contending that the authorisation annexed with the memorandum of appeal though signed by one Member of the Committee of Commissioners is a valid authorisation because the decision to file appeal against the impugned order was taken by the Committee of Commissioners in the file notings. Accordingly, in order to verify this fact we gave a pass over in the morning session and called for the relevant file notings.

5. Perusal of the file we find that vide a note sheet initiated by Inspector Shri S.H. Ahmed &, Superintendent (R), the facts relating to the appeal were detailed and placed before the Assistant Commissioner (Review). Assistant Commissioner (Review) vide his notings dated 6th of March 2006 send the file back for pointwise reviews on four points raised by him. The Inspector

concerned and Superintendent (R) thereafter submitted a fresh note answering the query raised by Assistant Commissioner (Review), and the file was forwarded by Joint Commissioner (Review) under his signature dated 17th of March 2006 to the Committee of Commissioner for considering file of appeal before CESTAT. Aforesaid note is signed by respective members of the Committee on 20th & 21st March 2006 respectively that while signing the note neither of them have given a specific opinion that the matter is fit for filing appeal nor they have recorded that they have gone through the record of adjudication and appeal. It is also not clear from the file noting if the record of appeal was sent for perusal of respective Commissioners. Thus it appears that members of the Committee of Commissioners have appended their signatures as they proposed to file appeal without application of mind to the fact of the case.

6. In the light of aforesaid facts, now we proceed to analyse the relevant Section 35B (2) of Central Excise Act, 1944 which reproduce thus :-

> *"The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under Section 35, as it, stood immediately before the appointed day, or the Commissioner (Appeals) under Section 35A is not legal or proper, direct any Central Excise Officer authorized by him in this behalf (hereinafter in this Chapter referred to as the authorized officer) to appeal on its behalf of the appellate Tribunal against such order."*

7. On plain reading of the provision it is evident that the Committee of Commissioners is under obligation to form an opinion before filing of appeal that the order of Commissioner (Appeals) is not legal or proper and it has to further direct some Central Excise Officers authorised by the Committee to file such an appeal.

8. In the instant case, from the perusal of the file notings it is apparent that the Committee of Commissioners did not sit together to apply their

mind to the facts of the case. The matter has been dealt with by them like any other bureaucratic file without going through the record. Appending of signatures on the note forwarded by the subordinate officers in our view is not sufficient compliance of the mandate of Section 35B (2) of the Central Excise Act, therefore, we conclude that instant appeals have been filed in violation of mandate of Section 35B (2) of the Central Excise Act, 1944, as such, the appeals are not maintainable. In our aforesaid view, we find support from the judgment of Hon'ble Delhi High Court in the matter of **CCE, Delhi – I vs. Kundalia Industries** reported in **2012 (279) E.L.T. 351 (Del.)** and the judgment of Hon'ble Punjab & Haryana High Court in the matter of **CCE, Delhi – III vs. B.E. Office Automation Products Pvt. Ltd.** reported in **2010 (249) E.L.T. 24 (P&H)**.

9. For the reasons recorded above, above said six appeals fail, the same are dismissed. The signed copy of the order be placed on each of the concerned file.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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