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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/S/2367/07*
E/2706/2007

Date 11/12/2007

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

To :
M/S M.M.POONJIALI SPICES LTD
BARBAD NAKA, SAILANA ROAD, RATLAM (MP)

M/S M.M.POONJIALI SPICES LTD

Appellant

Vs

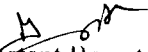
Respondent

C.C.E. INDORE

STAY ORDER NO. 1166/07-EX.

dated *27-11-07*

I am directed to transmit herewith a certified copy of Final order No. *576/07* Excise
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. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

2. Adv. / Consult

MR.RAMESH NAIR

LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -I, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No.2, R.K. Puram, New Delhi-110066.
Principal Bench, New Delhi**

COURT NO. II

**Excise Stay Application No. 2367 of 2007 in Appeal No.
2706 of 2007**

[Arising out of the Order-in-Appeal No. IND-I/131/2007
dated 29.06.2007 passed by The Commissioner (Appeals),
Customs & Central Excise, Indore.]

M/s M.M. Poonjiaji Spices Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri Ramesh Nair, Advocate - for the appellant.

Shri C.S. Rajput Authorized Representative (JDR) - for the
respondent.

**CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Dr. T.V. Sairam, Member (T)**

DATE OF HEARING : 27/11/2007.

Final Order No. 576/07EX Dated: 27-11-2007
Stay ORDER No 1166/2007EX

Per. S.S. Kang :-

Applicant filed this application for waiver of pre-deposit of duty of Rs. 2,15,098.00. The demand is confirmed in respect of the machines received under notification No. 22/03. The applicants are 100% EOU and they have received certain machines without payment of duty under notification No. 22/03. The condition of notification is that the machines are to be installed within one year and the same can be extended upto five years.

2. Contention of applicant is that they have applied for extension for installation of the machines which was rejected by the Assistant Commissioner. Thereafter, a show cause notice was issued demanding duty in respect of the machines by denying the benefit of notification. The adjudicating authority confirmed the demand and imposed the penalty. The appellant filed appeal and Commissioner (Appeals) without going on merits of the case dismissed appeal on the ground that the request for extension is already rejected and no appeal has been filed against that order. The contention is that the Commissioner (Appeals) not gone into the merits of the case.

Applicant relied upon the decision of the Tribunal in the case of Steel City Beverages Pvt. Ltd. vs. CCE, Jamshedpur as reported in 2003 (151) E.L.T. 661 (Tri. – Kolkata).

3. Contention of revenue is that once the request for extension is rejected by the competent authority. Therefore, the present demand, which is consequent to that rejection. The contention is that applicant had not challenged the order passed by the proper officer rejecting their request for extension. Therefore, the demand is rightly made.

4. We find that in the present case, the applicant received the machines in question without payment of duty by claiming the benefit of notification. As per the condition of notification, the machines are to be installed within one year and that period is extendable to five years on showing sufficient cause. The request for extension of the period which was rejected without affording the opportunity of hearing to the applicant. The Tribunal in the case of Steel City Beverage Pvt. Ltd. held that Communication of Deputy Commissioner denying credit is one sided view and without any show cause notice hence there is no estoppel against the

appellant to pursuing remedy of appeal against subsequent order of Deputy Commissioner. In these circumstances, we find that in view of the decision of the Tribunal in the case of Steel City Beverages Pvt. Ltd. (Supra), the matter requires re-consideration by the Commissioner (appeals). The impugned order is set-aside after waiving the pre-deposit of the duty. The matter is remanded back to the Commissioner, in view of the decision of the Tribunal and after affording an opportunity of hearing to the appellant. The appeal is disposed of by way of remand.

(Dictated and pronounced in the open court)

(S.S. Kang)
Vice President

(Dr. T.V. Sairam)
Member (Technical)

PK