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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/2755/2004

Date 10/10/2007

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

To :
M/S FOLY PRINTERS
16/18 MOTOR MARKET SAMALKHA VILLAGE
PALAM GURAGAON ROAD NEW DELHI


M/S POLY PRINTERS

Appellant

C.C.E. DELHI I

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 507/07-EX, dated 03-10-07 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 I

C-19, COMMUNITY CENTRE JANAKPURI NEW DELHI

110058

2. Adv. / Consult Ms REENAKHAIR R-163 'Second FLOOR' GREATER KAILASH Part - 1 NEW DELHI -48

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 -1, NOIDA - 201301

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

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

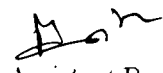
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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.

Excise Appeal No.2755 of 2004-~~SM~~ EX.

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President
 Hon'ble Mr. K.K.Agarwal, Member Technical

Jyoti Bal

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- | | | |
|----|--|-------------|
| 1. | Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | <i>No</i> |
| 2. | Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | <i>Yes</i> |
| 3. | Whether their Lordships wish to see the fair copy of the order? : | <i>Seen</i> |
| 4. | Whether order is to be circulated to the Department Authorities: : | <i>Yes</i> |

M/s. Poly Printers

Appellant

Versus

C.C.E., Delhi

Respondent

Appearance

Ms. Reena Khair, Adv. For Appellant

Shri Sanjay Kumar,, Authorised Representative(DR) For Respondent

Coram: Hon'ble Ms. Jyoti Balasundaram, Vice President
 Hon'ble Mr. K.K.AGARWAL, MEMBER TECHNICAL

Date of decision: 3.10.07

Final Order No. 507/2007 EX

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Per Jyoti Balasundaram:

In this case, a SCN dt.30.8.99 was issued to the appellants for clubbing their clearances with that of two other concerns and also proposed for recovery of duty as they had failed to pay duty on the work done by the appellants on job work basis. The notice was adjudicated by the Commissioner on 7.2.2000 upholding the charges against the appellants in the SCN and confirming a demand of duty of Rs.1,11,54,234/- together with equal amount of penalty. In the appeal filed before the Tribunal against the above order, vide order dt.26.7.2000, pre-deposit of Rs.25 lakhs towards duty and Rs.2 lakhs towards penalty was directed and the amount was deposited in compliance with the stay order. On 20.1.01, a deposit of Rs.10,000/- was made by Shri S.N.Gupta and Rs.5,000/- by Shri Chand Gupta. Vide final order No.A/903-05/01-NB dt.9.11.01, the Tribunal set aside the finding of the Commissioner that the clearances of the appellants were required to be clubbed with the clearances of two other concerns but upheld the duty liability payable on work done on job work basis. The case was remanded for requantification of the duty in the light of the above.

2. On 5.8.02, the appellant wrote a letter requesting for refund of amount paid in compliance with the stay order. On 29.8.02, the appeal filed by the revenue before the Hon'ble Supreme Court against the Tribunal's order dt.9.11.01 was dismissed. Pursuant to the remand order dt.24.3.03, the Commissioner confirmed a demand of duty of Rs.9,27,317/- by denying the



benefit of exemption in terms of Notification No.15/94-CE to clearances on job work and on 11.4.03, refund of Rs.27 lakhs was sanctioned to the appellants. However, an amount of Rs.19,81,729/- was adjusted against the demand confirmed by the Commissioner vide the requantification order. The appellants filed an appeal before Commissioner against adjustment of amount and also filed an appeal against order dt.24.3.03 passed by the Commissioner. Vide order dt.18.11.03, the Tribunal accepted the contention of the appellants that the benefit of the exemption was available to job work clearances and therefore, no duty was chargeable to that extent. The case was remanded once again for computation of the duty liability. On 4.3.04, the Commissioner(Appeals) ordered refund of the amount appropriated i.e. Rs.19,81,729/-. However, as regards interest, he held that no interest was payable since duty liability was determined only on 24.3.03 and refund was sanctioned on 11.4.03.

3 Pursuant to the remand order dt.18.11.03 of the Tribunal, the Commissioner redetermined the duty liability at Rs.6,520/- by his order dt.27.4.04 observing that the appellants may approach the appropriate authority for refund of the excess pre-deposit. The appellants have now filed the present appeal before Tribunal seeking interest on the delayed refund of pre-deposit after the expiry of three months from 9.11.01 which is the date on which the Tribunal set aside the Commissioner's order dt.7.2.2000, till the date of grant of refund.

J. J. J.

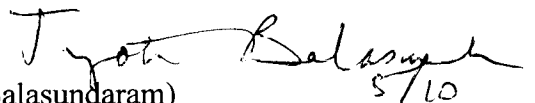
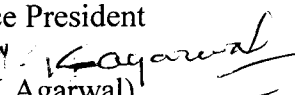
4. We have heard both sides and perused the records. In the light of the Delhi High Court's decision in the case of Voltas Ltd. vs UOI reported in 1999(112)ELT.34(Del.) holding that once an adjudication order was set aside, the Tribunal could not have ordered the amount of pre-deposit to be retained awaiting the order of re-adjudication, we do not see any merit in the submission of the Revenue that until 24.3.03 when the duty liability was requantified in terms of the Tribunal's remand order, no refund could be sanctioned prior to that date since the amount to be refunded was determined only on 24.3.03 and the amount was refunded within three months, and therefore no interest becomes by the Revenue. The refund of pre-deposit has to be made within a period of three months from the date of the order passed by the Tribunal in the absence of any stay order of a superior Court, as clarified by the Board's circular No.802/35/04 dt.8.12.04. Further argument of the Revenue that the question of refund of pre-deposit did not arise for the reason that there was no direction in the Tribunal's order dt.9.11.01 to this effect, is also not tenable for the reason that consistently it has been held that on setting aside the impugned order by the Tribunal, pre-deposit refund is to be made within three months therefrom. We also note that in the Hon'ble High Court of Andhra Pradesh's decision in Afcons Infrastructure Ltd. vs UOI reported in 2006(193)ELT.278, the Tribunal's final order was remand for de novo consideration and there was no direction for refund of pre-deposit in the final order and the Hon'ble High Court held that refund of



an amount deposited in terms of Section 35F is for availing the remedy of appeal and such amount has to be returned when the appeal is allowed. In this case, since the appeal was allowed on 9.11.01 by setting aside the order of the Commissioner, there has been a delay beyond three months in making the refund of the pre-deposit which was directed by the Tribunal. We, therefore, accept the contention of the appellants that they are liable to interest after the expiry of three months from 9.11.01 till the grant of refund. Interest at the appropriate rate is to be paid to them.

5. The appeal is thus allowed accordingly.

Order dictated in the open Court.


(Jyoti Balasundaram) 5/10
Vice President

(K.K. Agarwal) 5.10.07
Member Technical

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