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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/2541/2007 Date 10/01/2008

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

To :
M/S RAJASTHAN SPINNING & WEAVGING MILLS LTD
KHARIGRAM, POST BOX NO 28, P.O- GULABPURA
BHILWARA
311021

M/S RAJASTHAN SPINNING & WEAVGING MILLS LTD — Appellant

Vs

C.C.E. JAIPUR II — Respondent

STAY ORDER NO. 01/08

I am directed to transmit herewith a certified copy of Final order No. 01/08 Excise dated 28-11-07 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
   JAIPUR 302005.
2. Adv. Consult
   MR. V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. C.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 Publictions (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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Stay No.2197/07, E/Appeal No.2541/07

(Arising out of order in appeal No.501/HKS/CE/JPR.II/07 dated 17.7.2007 passed by the Commissioner (Appeals) of Central Excise, Jaipur)

For approval and signature:

Hon'ble Mr.S.S. Kang, Vice President)

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?

No

M/s Rajasthan Spinning & Weaving Mills Ltd — Appellant
(Rep. by Shri Ravi Raghavan, Advocate)

Vs

CCE, Jaipur-II — Respondent
(Rep. by Shri C.S. Rajput, JDR)

Coram: Hon'ble Mr S.S. Kang, Vice President
Hon'ble Mr.T.V. Sairam, Member (Technical)

Date of Hearing: 28.11.2007

Final Order No. 01/2008 EX
STAY ORDER No. 01/2008 EX

Per S.S. Kang:

Heard both sides. The applicant filed this application for waiver of pre-deposit of duty of Rs. 38,36,604/-. The applicant has already deposited an amount of Rs. 7,93,580/-.

The contention of applicant is that on the same issue whereby demand was confirmed on the same ground, the Tribunal vide Stay OrderNo.1142/06 dated 13.11.2006, waived the pre-deposit of duty and penalty. The contention is that the Commissioner (Appeals) dismissed their appeal for non-compliance of provisions of Section 35-F of Central Excise Act. The Commissioner (appeals) passed ex-parte order and applicant could not appear before the Commissioner (appeals) as they had not received the hearing notice. The contention is that this fact was brought to the notice of Commissioner (Appeals) but Commissioner (Appeals) rejected their contention.

The contention of revenue is that the provisional assessment was finalized and on finalization of account where the appellant had paid less duty, they are required to pay the same and where duty was paid more, the appellants are entitled for refund and they have to file a separate refund application.

We find that on the same issue, the Tribunal in appellants own case, waived the pre-deposit of duty and penalty vide stay order No.1142/06 dated 13.11.2006. In view of the above stay order, the amount already deposited is sufficient for hearing the appeal. Pre-deposit of balance duty and penalty is waived.

We find that the Commissioner (Appeals) dismissed the appeal for non-compliance with the provisions of Section 35-F of the Central excise Act and had not decided the appeal on merits. The impugned order is set aside and the matter is remanded to the Commissioner (appeals) to decide afresh the appeal on merits after affording an opportunity of hearing to the appellants. The appeal is disposed of by way of remand.

(Order dictated and pronounced in the open Court).

(T.V. Sairam)
Member(Tech)

(S.S. Kang)
Vice President