

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2826/2007-2828/2007 & E/S/2506-08/2007

Date 01/02/2008

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

To :
M/S KITTY FOOD PRODUCTS
BXXV 542/5, JALANDHAR BYE PASS, KARA BARA,
LUDHIANA.

M/S KITTY FOOD PRODUCTS

Appellant

C.C.E. LUDHIANA

Vs
Respondent

STAY ORDER NO. 94-96/08-EX,

I am directed to transmit herewith a certified copy of Final order No. 36-38/2008-EX, dated 28-1-08
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. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult

MR. BALBIR SINGH, ADVOCATE

46, ARADHANA ENCLAVE, R.K.PURAM XIII, N DELHI.

3. & 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)

1 M/S KITTY INDUSTRY PVT LTD

VILLAGE PANGLIAN, P.O HEERAN, CHANDIGARH ROAD, LUDHIANA.

2 SH RAMESH MAGO, MD

M/S KITTY INDUSTRIE PVT LTD, VILLAGE- PANGLIAN, P.O HEERAN, CHANDIGARH ROAD, LUDHIANA.

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. I**

**Excise Stay Nos. 2506 to 2508 of 2007
in Excise Appeal Nos. 2826 to 2828 of 2007**

Date of Hearing/ Decision: 28.1.2008

M/s Kitty Food Products & Others

Appellants
[Rep. by Mr. Rupender Singh, Advocate]

Vs.

CCE, Ludhiana

Respondent
[Rep. by Mr. S.M. Tata, Authorized Representative (DR)]

**Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. A.K. Srivastava, Member (Technical)**

Final **ORDER** No. 36 - 38/2008EX
Per Justice S.N. Jha: *STAY* ORDER No. 94 - 96/2008EX

These three stay applications in appeals arising from the common orders of the Adjudicating Authority and the Commissioner (Appeals), were taken up together on the point of waiver of pre-deposit. The submission of the learned Counsel is that the appellants M/s Kitty Industries and M/s Kitty Food Products together have already paid a sum of Rs. 7,34,656/- which comes to about 50% out of duty demanded from them combinedly. It was stated that the duty is being demanded treating the two units as one and the same, and if that be so, the Commissioner (Appeals) was not justified in directing M/s Kitty Industries to deposit further sum of Rs. 2 lakhs towards duty, besides penalty. On calculation we find that the appellants has already deposited roughly 50% amount of duty. In the circumstances, we are of the view that the waiver of pre-deposit of further amount should have been allowed.

2. After we dictated the above order, learned Counsel for the appellant submitted that the deposit already made, as above, being sufficient, we may remand the case to the Commissioner (Appeals) for decision on merit. We find the request reasonable. We, accordingly, set aside the order of the Commissioner (Appeals) and remand the matter back for a decision on merit without insisting on pre-deposit, in accordance with law.

(Order dictated and pronounced in the open Court)

[Justice S.N. Jha]
President

[A.K. Srivastava]
Member [Technical]

[Pant]