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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/2943/2007&E/s/2620/2007

Date 14/02/2008

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

To :
M/S GARG ISPAT UDYOG LTD
G-459-62, INDUSTRIAL AREA, BHIWADI, DISTT-
ALWAR, RAJASTHAN.

M/S GARG ISPAT UDYOG LTD

Appellant

Vs

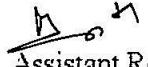
Respondent

C.C.E. JAIPUR I

STAY ORDER NO. 144/08-EX

I am directed to transmit herewith a certified copy of Final order No. 53/2008 Excise
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 30-1-08


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R. BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

2. Adv. / Consult

MR. BHASIN SETHI & ASSOCIATE

401, SATYAM CINEMA BUILDING, RANJEET NAGAR, DELHI

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

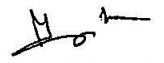
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH – Excise
E/S/2620/07 in E/2943/07

M/s. Garg Ispat Udyog Ltd.

Appellant
(Rep. by Sh. J.P.Kaushik, Adv.)

vs

CCE, Jaipur

Respondent
(Rep. by Sh. V.Choudhry, Jt.CDR)

Coram : Hon'ble Mr. JUSTICE S.N.JHA, PRESIDENT
Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

Date of Decision: 30.1.08

Final Order No. 53/08-EX

Per Justice S.N.Jha:

Stay order No. 144/08-EX

The application on behalf of the appellants/assessee is for stay of the order of the Commissioner(Appeals) dt.23.8.0, by which the Ld. Commissioner dismissed the appeal of the appellants for non-compliance under Section 35F of Central Excise Act i.e. for non-deposit of Rs.one lakh.

2. After hearing both the sides, we confine ourselves only to the issue as to whether a prima-facie case justifying waiver of pre-deposit in terms of Section 35F of the Act before the Commissioner was made out or not. The Commissioner has not gone into the merit of the case. The issue that had arisen before the Commissioner was whether the appellants are entitled to the benefit of exemption under Notification No.6/2002-CE dt.1.3.02 as amended ^{on} the M.S.Pipes manufactured by them and cleared to PHED, Rajasthan during June'05 to Jan'06. The case of the appellants is that the certificate issued by the Collector & Distt. Magistrate dt.3.8.05

substantially satisfied the conditions prescribed in the relevant notification read with departmental instructions, and if there was anything lacking, a certificate of the Executive Engineer was submitted, but taking a hyper technical view of the matter, the claim was rejected.

3. We are satisfied that the appellants had ^{a prima facie} case in their favour and, therefore, the Commissioner should have granted full waiver of the amount. Accordingly, we set aside the earlier order dt.8.5.07 directing pre-deposit of Rs.one lakh as well as final order dt.23.8.07 dismissing the appeal for non-compliance. The matter is remanded to the Commissioner(Appeals) with direction to hear the appellants and decide the appeal on merits in accordance with law without insisting on any pre-deposit.

3. The appeal stands disposed of in the above terms.

Order dictated in the open Court.

(Justice S.N.Jha)
President

(A.K.srivastava)
Member Technical

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