

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

Appeal No. E/1786/2007-1787/2007,2015/2007-2017/2007,2068/2007 & E/S/1422-23 Date 17/03/2008
&E/S/1629-31, E/S/1682/07

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

To :
M/S KUMAR INDS.
A-42, MAYAPURI INDL. AREA, PHASE-II, NEW DELHI

M/S KUMAR INDS.

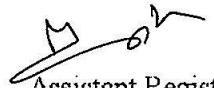
Appellant

C.C.E. DELHI II

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 88-93/08 &
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

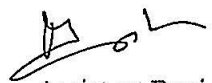
S.O 244/Excise dated 31-1-08
7249/08


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. ~~E.D.R.~~
~~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

2. NAVEEN MULLICK, ADV.,
B-388, MEERA BAGH, N. DELHI-63
3. SH. A.K. MISHRA,
B-25, LAJPATNAGAR - III
N. DELHI-24


Assistant Registrar
(Excise Appeal Branch)

P.T.O.

- 1 SHRI SAMEER BAJAJ, M/S KUMAR INDS.
A-42, MAYAPURI INDL. AREA, PHASE-II, NEW DELHI
- 2 M/S GENUIS ELECTRICALS & ELECTRONICS
C-144, MAYAPURI INDL. AREA, PHASE-II, NEW DELHI
- 3 SHRI SATISH JAIN, DIRECTOR M/S GENUIS ELECTRICALS & ELECTRONICS PVT. LTD.
C-144, MAYAPURI INDL. AREA, PHASE-II, NEW DELHI
- 4 M/S VIKAS ELECTRICALS & ELECTRONICS
RZ-41, GALI NO. 4, SAGARPUR, NEW DELHI
- 5 SATVIK INDS.
10/1, DLF INDL. AREA, MOTINAGAR, NEW DELHI
110015

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066,
PRINCIPAL BENCH, COURT NO.1**

**Excise Stay Application Nos.1422 and 1423, 1629-31 and 1682 of 2007
in and Excise Appeal Nos. 1786 and 1787, 2015-2017 and 2968 of
2007**

Date of Hearing/Decision: 31.1.2008

[Arising out of Order-in-Original No.25/2006-07 dated 23.3.2007 passed by
the Commissioner of Central Excise, Delhi-II, New Delhi]

For approval and signature:

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

-
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?
-

M/s. Kumar Industries Appellant

Mr. Sameer Bajaj

M/s. Genius Electrical & Electronics

M/s. Satvik Industries

Vs.

CCE, Delhi-II Respondent

Appearance: Mr. Hemant Bajaj, Mr. Navin Mullick and Mr.A.K.
Mishra, Advocates for the Appellant

Mr. V.Chaudhry, Authorized Representative(Jt.CDR) for the
Respondent

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

Final ORDER No. 88-93/08-EX

Per Justice S.N. Jha: *stay order nos. 244-49/08-EX*

These appeals arising from the common order-in-original of
Commissioner of Central Excise dated 23.3.2007 were taken up for

hearing on the point of waiver of pre-deposit. In Appeal No.E/2968/07 (Satvik Industries) penalty of Rs.1,06,01,497/- has been imposed on the appellant. In Appeal No.E/1786/07(Kumar Industries) a duty of Rs.47,181/- after disallowing cenvat credit claimed by the appellant has been levied and a penalty of equal amount has also been imposed. In Appeal No.1787/07(Sameer Bajaj), the appellant has been imposed with a penalty of Rs.5000/-. In Appeal No.E/2015/07(Genius Electrical and Electronics) the demand of duty amounting to Rs.32,160/- was confirmed and appropriated from debits made in RG.23A Part II. Besides this the appellant has been asked to pay penalty of Rs.16,07,133/-. Further penalty of Rs.3 lakhs has been imposed on the Director, Samir Jain. The appellant in A.No.E/2017/07 (Vikas Electricals & Electronics) has been asked to pay duty of Rs.54,888/-and also pay penalty of equal amount.

2. The appeals as indicated at the outset, came up for hearing on the short point of waiver of pre-deposit but while making arguments on the prima facie of the case, learned counsel for the appellants submitted that no effective hearing was provided to the appellants and therefore, the matters are fit to be remanded back to the Commissioner for fresh adjudication after giving opportunity of hearing, on merits. In this regard, we were taken through the sequence of events leading to the impugned order. It was submitted

that, no doubt, notices of personal hearing had been issued to the appellants but the final order was passed ex parte. A specific grievance was made on behalf of M/s. Kumar Industries to the effect that application for adjournment had been submitted but making an erroneous observation in the order to the effect that no adjournment had been prayed for, the Commissioner proceeded to pass orders. On behalf of the Department, the learned Departmental Representative submitted that the appellants did not cooperate with the adjudicating authority as they failed to appear on different dates fixed and therefore, they were not entitled to argue that the opportunity of hearing was not given.

3. We have considered the submissions advanced on behalf of the parties and also perused the records. After giving anxious consideration of the cases of the parties, we are of the view that it will be fit and appropriate to direct the Commissioner to pass fresh order after giving opportunity of hearing to the appellants, on merits.

4. A doubt arose whether in the event the impugned orders are set aside and the matter is remanded to the Commissioner, any claim for refund would arise. We may at this stage mention that while M/s. Satvik Industries has not made any payment towards the impugned demand, M/s. Genius Electrical & Electronics have paid the entire amount of Rs.16,07,133/- as duty. Other appellants, like M/s. Satvik Industries, have not made any payment. Question arose as to whether the rest of the appellants should be asked to pay the demand and M/s. Genius Electrical and Electronics should be asked

to pay the amount of penalty imposed on it. After hearing the counsel for the appellants and the learned Departmental Representative, we are of the view that in the facts and circumstances of the case, M/s. Satvik Industries should pay a sum of Rs.30 lakhs towards penalty imposed on it as a condition of fresh hearing by the Commissioner. As regards the rest of the appellants, keeping in view the attending facts and circumstances, we think that they may not be called upon to pay any amount as a condition of fresh hearing by the Commissioner. Accordingly, we direct M/s. Satvik Industries to deposit a sum of Rs.30 lakhs within six weeks from today. On such deposit being made, the said appellant will be given fresh opportunity of hearing and fresh order on merit shall be passed by the Commissioner. It is made clear that if the amount is not paid within the aforesaid period, the appellant will forfeit the right of fresh hearing and adjudication and in that case the impugned order shall stand as regards the said appellant. After the deposit is made as above, the Commissioner shall pass order within four months. Learned counsel for the appellants have stated that the appellants will give full cooperation to the Commissioner during the course of fresh hearing.

5. In the result, the impugned orders of the Commissioner are set aside and the appeals are disposed of in the above terms.

6. After we dictated the order, the learned Departmental Representative pointed out that by the impugned order of the Commissioner certain duty amounts have been levied on the parties

which are not in appeal. It is made clear that the impugned order has been set aside only with respect to the appellants who are in appeal before the Tribunal and only they are entitled to fresh adjudication. We further clarify that in view of the direction to the Commissioner to pass fresh order, the deposit made by the appellant, and other concerned parties will be kept on hold subject to final order of the Commissioner.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

[A.K. Srivastava]
Member (Technical)

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