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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/120 /2008WITHE/M/326/08&E/S/130/08 Date 22/05/2008

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

To :
C.C.E. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

M/S KUNDALIA INDUSTRIES MISC ORDER NO. 521/08-EX, STAY ORDER NO. 498/08-EX, Vs Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 279/2008-EX Excise dated 23-4-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(Excise Appeal Branch)

Copy to :
1. Respondent

M/S KUNDALIA INDUSTRIES

KLJ HOUSE, 63, RAMA MARG, NAJAFGARH ROAD, NEW DELHI

2. Adv. / Consult SH. G. L. RAWAL, ADV.,
J-143, ASHOK VIHAR, PHASE-I,
DELHI-52

3. C.D.R.
~~4. JCDR~~.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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.

E/120/08 with E/M/326/08 & E/S/130/08

[Arising out of Order-in-Appeal No.116-CE/DLH/2007 dt.15.10.07 passed by the Commissioner(Appeals), Delhi-I)

For approval and signature:

Hon'ble Mr. S.S. KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, 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 would 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 Department Authorities:	:

CCE, Delhi-I — Appellant

Versus

M/s. Kundalia Industries — Respondent

Appearance

Shri V.Choudhary, Authorised Departmental Representative(DR) For Appellant

S/Sh. G.L.Rawal, Sr. Adv. With Rajesh Rawal, Adv. For Respondent

Coram: Hon'ble Mr. S.S. KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 23.4.08
FINAL Order No. 279/08-EX
STAY ORDER NO. 498/08-EX
MISC ORDER NO 521/08-EX

Per S.S.Kang:

The revenue filed this appeal against the order-in-appeal passed by the Commissioner(Appeals). The respondent raised preliminary objection on the ground that there is no opinion formed by Committee of Commissioners to file appeal and also there is no authorization by the Committee of Commissioner to file appeal as per the requirement of Section 35B(2) of Central Excise Act.

2. In response to this objection, the revenue filed a Misc. application for placing on record a copy of the proceedings before the Committee of Commissioner. In the application, it is also submitted that requirement of authorization for filing of appeal may be waived.

3, The contention of the applicant is that as per the copy of the proceedings before the Committee of Commissioner, there is no opinion formed by the Committee. The proposal for consideration was put up before the Committee of Commissioners. But there is no opinion by the Committee that order is illegal or not in accordance with law and also there is no authorization by the Committee of Commissioner to file appeal to any excise officer. The appellant relied upon the following decisions of the Tribunal:

1. CCE, Siliguri vs Mukta Biri Factory 2007(212)ELT.285(Tri.Kolkata)

2. CCE, Siliguri vs Mall Eximp (P) Ltd. 2007(218)ELT.711(Tri.Kolkata)

In the decisions relied upon by respondent the appeals filed by the revenue was dismissed only on the ground that no opinion was formed by the Committee of Commissioner regarding filing of the appeal and there is no authorization for filing the appeal.

4. The contention of the revenue is that the proposal was signed by the members of the Committee of Commissioner, therefore, they agreed with the proposal made for filing of the appeal. In respect of authorization, the contention is that as the appeal has been filed by the Commissioner of Central Excise who is the member of the Committee of Commissioner and

the revenue made a request to dispense with the requirement of authorization by the Committee of Commissioners.

5. For ready reference the provision of Section 35B(2) as amended w.e.f. 30.5.05 is reproduced below:

> "The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day, or the Commissioner(Appeals) under Section 35A, is not legal or proper, direct any Central Excise Officer authorized by him in this behalf(hereafter in this Chapter referred to as the authorized officer) to appeal on its behalf to the Appellate Tribunal against such order".

As per the provision of Central Excise Act, the opinion is to be formed by the Committee of Commissioner of Central Excise to the effect that the order in question is not legal or proper and the Committee of Commissioners is to direct any Central Excise officer authorized in this behalf to file appeal on its behalf.

6. We have gone through the copy of the proceedings before the Committee. There is no opinion formed by the Committee of Commissioners regarding illegality of order as required under Section 35B of Central Excise Act. Further we find that there is no authorization by the Committee of Commissioners to file appeal on its behalf. The revenue in the Misc. application made a request that requirement of authorization for filing appeal may be waived. We find that as per the provisions of Section 35B of the Act Committee of Commissioners to authorize the excise officer to file appeal on its behalf, therefore, this condition cannot be waived.

7. The appellant also relied upon two decisions of Tribunal whereby the appeals filed by the revenue were dismissed, ~~When~~ where there is no opinion rendered by the Committee of Commissioners about legality/correctness of order in question and no authorization by the Committee to the officer who

filed the appeal. In these circumstances as there is no opinion formed by the Committee of Commissioners regarding the legality/correctness the order in question and there is no authorization to file appeal by the Commissioner of Central Excise who filed the appeal on record rather revenue asked for waiver of this condition. In these circumstances, we find merit in the contention of the respondent. The appeal is dismissed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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