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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/3335/2006-3343/2006 WITH E/S/2670-2678/2006 Date 03/06/2008

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

To :
M/S OVERSEAS PAINTS PVT LTD.
50-H-1.K BLOCK,KIDWAI NAGAR.KANPUR.

M/S OVERSEAS PAINTS PVT LTD. Appellant
Vs
C.C.E.KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No.280-288/08& S.O.NO.508-16 /08 Excise dated 31-3-08

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.KANPUR
   117/7.SARVODAYA NAGAR.KANPUR.
2. Adv. / Consult SH. K.K. ANAND, ADV., A-5, BASEMENT, LAJPAT NAGAR-III N. DELHI-24
   2. SH. PREM RANJAN KUMAR, ADV., C-94, LAXMI KUNJ APARTMANT, ROHINI, SECTOR-13, N. DELHI-55
3. C.D.R.
4. ~~J.C.D.R.~~
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)

P.T.O. =2

1 SH G.K.AGRAWAL,PROPRIETOR
M/S PRESTIGE PAINTS,50-H-1,K BLOCK,KIDWAI NAGAR,KANPUR.
2 M/S NEW PAINTS EMPORIUM.
SHAHGANJ,AGRA.
3 M/S SANJAI ENTERPRISES.
70,SHIVRAJ NIKETAN,KHATIPURA,JAIPUR.
4 SMT MEENU AGRAWAL,DIRECTOR
M/S OVERSEAS PAINTS PVT LTD,K-36,PHASE-II,PANKI INDL.AREA,KANPUR.
5 M/S OVERSEAS PAINTS LINKERS
HERO COMPLEX,BELANGANJ,AGRA.
6 M/S PRESTIGE PAINTS
50-H-I,K BLOCK,KIDWAI NAGAR, KANPUR.
7 M/S PRESTIGE ALLKYDS (P)LTD.
1022,NAUBASTA,KANPUR.
8 M/S OVERSEAS LINKERS.
BELANGANJ,AGRA.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

E/STAY APPLICATION Nos.2670 to 2678/2006 in & EXCISE APPEAL Nos. 3335 to 3343 of 2006-DB

[Arising out of Order-in-Original No. 7/Commnr/MP/2006 dated 31.3.2006 passed by the Commissioner of Central Excise, Kanpur]

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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Overseas Paints Pvt. Ltd.,
Shri G.K. Agarwal,
M/s. New Paints Emporium,
M/s. Sanjay Enterprises,
Smt. Meenu Agarwal, Director,
M/s. Overseas Paints Linkers,
M/s. Presting Alkydes (P) Ltd.,
M/s. Overseas Linkers — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:

Shri K.K. Anand & Shri Prem Ranjan Advocates for the appellants,
Shri V. Choudhary, SDR Departmental Representative, for the Revenue

Coram:
Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 31st March, 2008

FINAL ORDER NO. 280-288/08-EX. **dated** ______
STAY ORDER NO. 508-516/08-EX

Per S.S. Kang:

Heard both sides.

2. The applicants filed these stay applications for waiver of pre-deposit of duty of Rs. 1,74,71,910/- and penalties.

3. Demand is against M/s. Prestige Paints. The Counsel appearing on behalf of M/s. Prestige Paints submitted that the impugned order is passed ex-parte. Contention is that when the show cause notice was received they filed an application before the Settlement Commission and also filed a declaration admitting their liability to the extent of approximately Rs. 21 lakhs and the said amount has already been deposited by them. Contention is that the Settlement Commission rejected their application and against rejection of their application they filed a writ petition in the Hon'ble Allahabad High Court. During the pendency of writ petition the adjudicating authority fixed date of hearing on 26.7.2006 and the applicants made a request for adjournment on the ground that writ petition against order passed by the Settlement

Commission is pending. Hon'ble High Court dismissed the writ petition with observation that the applicants can seek remedy of review. In pursuance of the order of High Court the applicants filed application for review before the Settlement Commission and the same was again rejected. The applicants also submitted that the impugned order was passed in violation of principle of natural justice as cross-examination of witnesses whose statements were relied upon by the adjudicating authority for confirmation of demand was disallowed.

4. Contention is that trading firms are also dealing with the goods of other manufacturers. Case of the Revenue is that all paints & varnishes cleared under invoices of dealers are manufactured by appellants. Ground of demand is also that other manufacturers like Overseas Paints and Presting Alkydes are not independent manufacturers of paints and varnishes. Case of the Revenue is that Prestige Paints are procuring raw material in the name of these two firms, manufacturing the goods and clearing the same under invoices of these manufacturers. Contention is that out of the same investigation show cause notice was issued to Prestige Paints for confiscation of varnishes which were alleged to be cleared without payment of duty. Commissioner (Appeals) vide order dated 27.3.2002 set aside the adjudication order in respect of confiscation of goods in the case of Overseas Paints Pvt. Ltd. Contention is that as the Revenue is considering Overseas Paints as independent manufacturer and separate proceedings which is part of the

same investigation, now the revenue alleged that goods were actually manufactured by Prestige Paints but are shown to be manufactured by Overseas Paints Pvt. Ltd.. Therefore, demand is not sustainable.

5. Contention of the Revenue is that the case was fixed for hearing on various dates but on each and every date the applicants asked for adjournment and ultimately case was adjudicated on the evidence on record. In respect of cross-examination contention is that the applicants in most of the cases asked for cross-examination of co-noticees. Co-noticees are the firms either manufacturer or traders which are controlled by the proprietor of Prestige Paints Shri G.K. Agarwal. In these circumstances request for cross examination was rightly denied.

6. Revenue also submitted that before Settlement Commission the applicants had taken different stands at different stages regarding their liabilities.

7. In reply the applicants submitted that there are some dealers which are not related to Shri G.K. Agarwal, proprietor of Prestige Paints. Contention is that M/s. Raj Ram Vinod Kumar, and M/s. Sethi Paints, Kanpur are not related to Shri G.K. Agarwal, proprietor of Prestige Paints but their cross examination was also declined.

8. In this case the adjudicating order was ex-parte. The applicants during pendency of the adjudicating proceedintgs approached the Settlement Commission and admitted their liability to the extent of approximately Rs. 21 lakh. Settlement Commission rejected their

application and applicants filed writ petition in Allahabad High Court. During pendency of the writ petition adjudicating authority fixed the date of hearing but the applicants asked for adjournment on the ground that the matter is pending before the High Court. Hon'ble Allahabad Court vide order dated 30.4.2003 dismissed the writ petition with the observation that the applicants may seek remedy of review. Thereafter, the applicants approached the Settlement Commission and the Settlement Commissioner rejected their application. In these circumstances we find that it is a fit case for reconsideration by the adjudicating authority. The amount already deposited is sufficient for hearing of the appeal. Accordingly, we waive the condition of pre-deposit of remaining amount of duty and penalty and set aside the impugned order. The matter is remanded to the adjudicating authority to decide the same after affording reasonable opportunity of hearing to the appellants and to re-consider the request of the appellants for cross-examination. Appeals are disposed of by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 31st March, 2008-05-05
RK