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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/421 /2008 WITH E/S/395/08 &E/M/366/08 Date 04/06/2008

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

To :
M/S INFRAGRO INDUSTRIES LTD
P.O. MATHKHERA, RAMPUR, UP
M/S INFRAGRO INDUSTRIES LTD — Appellant
Vs
C.C.E. MEERUT II — Respondent

M.O.NO. 528/08

I am directed to transmit herewith a certified copy of **Final order** No.314/08.S.O.NO.538/08 **Excise** dated 26-5-08

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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD. MEERUT (UP)
2. Adv. / Consult
   ~~SH. K.K.ANAND.ADV.,~~
   ~~A-5,BASEMANT,LAJPATNAGAR,N.DELHI-24~~
   SH. SAURABH MATHUR, ADV,
   LASA CONSULTANTS, CIVIL LINES,
   MORADABAD
3. S.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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Excise Misc. Application No. 366 of 2008 in Appeal No.
E/ST/395/08 EA **421 of 2008**

[Arising out of the Order-in-Appeal No. 239-CE/MRT-II/ 2007 dated 27/11/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut-II.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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 Department Authorities? : No

M/s Infragro Industries Ltd. Appellant

Versus

CCE, Meerut – II Respondent

Appearance

Shri S.K. Mathur, Consultant – for the appellant.

Shri C.S. Rajput, Authorized Representative (DR)– for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 26/05/2008.

STAY ORDER NO 538/08-EX.
FINAL Order No. 314/08-EX. Dated :
MISC ORDER NO 528/08-EX.

Per. S.S. Kang :-

Heard both sides. Applicant filed this application for recalling the ex-party order whereby the stay petition was dismissed for non-prosecution. In view of the reasons explained for non-appearance on the date of hearing, the order for dismissing the stay petition is recalled and the stay petition is being heard.

2. Applicant filed this application for waiver of pre-deposit of duty of Rs. 7,44,045.00 and penalty.

2. Applicant is a 100% EOU and demand was confirmed on the ground that applicant, during the period in dispute, cleared the goods to Domestic Tariff Area (DTA) by availing the benefit of Notification No. 23/03, which provides concessional rate of duty of 30% in case the 100% EO Unit

cleared the goods to DTA, as per para 6.8B of Exim Policy. The demand was confirmed on the ground that as per para 6.8B of the Exim Policy, units other than Gem & jewellery units made sale goods/services upto 50% of FOB value of exports, subject to fulfillment of minimum Net Foreign Exchange Positive (NFEP) of payment of appropriate duty.

3. The only contention of applicant is that during the period from June 2005 to January 2006, the applicant cleared the goods to DTA and in January 2006, the applicant also exported goods worth Rs. 6,33,263.00, therefore, the demand should be made after taking into consideration the value of the goods exported.

4. The contention of revenue is that as per Exim Policy, there is no pro-rata benefit available to the applicant. The contention is also that as applicant had not achieved the net Foreign Exchange Earnings, as per the permission granted to setting up the 100% EOU, therefore, the demand is rightly made.

5. The admitted facts of the case are that applicant fail to achieve the positive Net Foreign Exchange Earnings, as per para 6.8B of Exim Policy before making clearance to D.T.A. We find, as per the condition of Notification 23/03 that the benefit of concessional rate of duty is available in case the clearances are made by 100% EOU in accordance with the Exim policy. In the present case, as the clearances are made without fulfillment of the condition of Exim Policy, therefore, it is not a fit case for waiver of duty. The applicants are directed to deposit the duty amount i.e. Rs. 7,44,045.00 within a period of eight weeks from today. On deposit of the above-mentioned amount, the pre-deposit of amount of penalty is waived.

6. We find that Commissioner (Appeals) dismiss the appeal for non-compliance to the Provisions of Section 35F of the Central Excise Act, as appellant fail to comply with the condition of the stay order.

7. The Commissioner (Appeals) has not decided the appeal on merit. In these circumstances, the impugned order is set aside and the matter is remanded to the Commissioner

(Appeals) to decide on merit, on showing the deposit of above-mentioned amount, and after affording the opportunity of hearing to the appellant. The appeal allowed by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK