

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

Appeal No. E/436/2008 E/COD/190/08&E/S/411/08

Date 12/06/2008

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

To :
M/S SM DYECHEM LTD.

SOYA COMPLEX,
SANCHI ROAD,
VIDISHA (MP)
M/S SM DYECHEM LTD.

Appellant

Vs
Respondent

C.C.E BHOPAL

M.O. NO. 581/08-EX

I am directed to transmit herewith a certified copy of Final order No 337/08, SO.NO.624/08.

Excise dated 02-6-08

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

M. S. Khair
Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

*MS. REENA KHAIR, ADV.,
R-163, PART-1, G.K. IND FLOOR
N. DELHI-110*

3. S.D.R.

~~4. I.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 Publications (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, LP.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

M. S. Khair
Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I**

**Excise Appeal No. 436 of 2008 with
Excise COD Application No. 190 of 2008
Excise Stay Application No. 411 of 2008**

[Arising out of Order-in-Appeal No. 196/CE/BPL/2005 dated 26.12.2005
passed by Commissioner of Central Excise (A), Bhopal.]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see : *No*
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
 2. Whether it should be released under Rule 27 : *No*
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair : *No*
copy of the Order?
 4. Whether Order is to be circulated to the : *Yes*
Departmental authorities?
-

M/s. S.M. Dyechem Ltd.

Appellant

Vs.

Commissioner of Central Excise
Bhopal

Respondent

Appearance:

Ms. Reena Khair, Advocate for the Appellant
Mr. Deepak Garg, DR for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
 Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 2.6.2008

Misc. ORDER No 581 / 08
 FINAL **ORDER NO. 337 / 08**
 STAY ORDER on 624 / 08
Excise COD Application No. 190 of 2008

Per Justice S.N. Jha (for the Bench):

This is an application for condonation of delay in filing the appeal. It is submitted that if the limitation is reckoned from the date of receipt of copy of the impugned order, it would appear that the appeal was filed in time but as an abundant caution the COD has been filed. It was stated that copy of the order was sent by covering letter dated 17.10.07; which was received by the appellant on 1.11.07. The appeal was filed on 31.1.08.

2. Considering that the order-in-appeal was passed on 26.12.05, that is, much prior to the date of dispatch of the copy thereof, as mentioned above, on 22.5.2008 the DR was asked to take instruction on the point of communication of the order. The DR stated ~~that~~ on written instructions of the Commissioner that the copy of the order was sent earlier but it was returned as the appellants factory was reportedly closed. After some intra-departmental correspondence, finally, another copy was sent on 17.10.07. It is not clear from the 'instructions' as to

when copy of the order was earlier sent to the appellant and the same was returned. Be that as it may, in the facts of the case, we are of the view that it will be in the end of justice to condone the delay, if any, so that the appellant may be heard on merits. We accordingly, condone the delay and thus allow the application.

Excise Stay Application No. 411 of 2008

3. After hearing the stay petition for a while, it appeared to us that the appeal itself can be finally disposed of and accordingly after waiving the pre-deposit of the duties as per the impugned order, we heard the parties.

4. The appellant is a manufacturer of refined edible oil which became dutiable @ 8% with effect from 1.3.03. The appellant claims that they were eligible for exemption applicable to small scale units and accordingly they filed the required declaration on 14.3.03. The stand of Department however, is that no such declaration was filed. According to the learned advocate for the appellant, they paid duty on the refined vegetable oil after crossing the duty-free limit of Rs.one crore and whatever duty at 8% was collected, was deposited with the Department. The learned DR submitted that the statement of Shri P.C.Tiwari, authorised representative of the appellant company was at variance with the stand of the appellant in the Tribunal.

5. We find that the factory was closed and for various reasons, the appellant did not appear, before the original authority as well as the Commissioner (Appeals). These disputed facts which are relevant to the demand raised, have not been gone into. The submissions of the appellant have not been taken into consideration with reference to the records as they did not participated in the proceedings before the original authority or Commissioner (Appeals). Therefore, we deem it proper to set aside the orders of the lower authorities and remand the matter to the original authority. We direct the appellant to appear before the original authority on 4.8.2008 along with written submissions and relied upon documents.

6. The appeal is allowed in the above terms by way of remand.

(Dictated in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)