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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/2935/2007 ,E/S/2612/2007 Date 12/06/2008

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

To :
C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I Appellant

Vs

M/S JAIPUR SYNTEX LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**338/08 ,S.O.NO.625/08 **Excise** dated 05-6-08

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 JAIPUR SYNTEX LTD.

BEHROR, DISTT. ALWAR

2. Adv. / Consult SH. RAVI RAGHAVAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. 1

Excise Appeal No. 2935 of 2007 with Excise Stay No. 2612 of 2007
[Arising out of Order-in-Appeal No. 271 (GRM)CE/JPR-I/2007 dated 23.8.2007 passed by the Commissioner (Appeals-I), Central Excise, Jaipur]

Date of hearing/decision: 05.06.2008

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	

CCE, Jaipur-I — Appellant
[Rep. by Mr. H.K. Thakur, Jt. CDR]

Versus

M/s Jaipur Suntex Ltd., ...Respondent
[Rep. by Mr. Ravi Raghavan, Advocate]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member [Technical]

FINAL ORDER 338/08-EX.
STAY ORDER 625/08-EX

Per: Justice S.N. Jha:

This appeal came up for hearing in the stay matter, but after hearing the parties for some time it appeared to us that the appeal itself may finally be disposed of and accordingly we heard the parties, though in fairness to the learned DR, we must note his objection to the final disposal of the appeal on the ground that the appeal has been listed for hearing in the stay matter.

2. The appeal arises from the order of the Commissioner (Appeals) sanctioning refund of Rs. 2,36,92,045.52 to the respondent in terms of the provision of Section 11B of the Central Excise Act. It may be stated here that the Tribunal in its judgement dated 11.04.2002 in Excise Appeal No. 1817 of 2001-

NB had recorded a categorical finding that the incidence of duty had not been passed on and the respondent was entitled to refund of the amount as detailed in the impugned order of the Commissioner. While sanctioning refund, the Commissioner (Appeals) rightly took note of the said finding of the Tribunal in an inter-parte proceedings and passed order in favour of the respondent.

3. It may be mentioned here that the Department filed appeal in the Rajasthan High Court challenging the order of the Tribunal along with stay application in 2002. The said appeal at one stage was dismissed in default but later restored. It is not in dispute that no interim order has been passed by the Rajasthan High Court during the intervening period of six years or so.

4. We are of the view that the Tribunal having recorded a clear finding in favour of the respondent holding it entitled to refund with the Commissioner (Appeals) passing order in consonance with the order of the Tribunal, the challenge to the order of the Commissioner (Appeals) is totally misplaced. It was submitted by learned DR that interim order may be passed subject to the order of the High Court. We are of the view that refund of the amount pursuant to the impugned order of the Commissioner itself shall be subject to the order of the High Court and, therefore, no such order at our end is unwarranted. We are also of the view that passing any order of stay will virtually amount to reviewing the previous order which is not permissible. The Tribunal can only rectify errors apparent on the face of the record and any interim order of the stay would only stall implementation of the Tribunal's order which will not be appropriate on our part to do. We, indeed, find no ground to entertain the appeal which is accordingly dismissed along with stay application.

[Dictated and pronounced in the open Court].

[Justice S.N. Jha]
President

M. Veeraiyan
Member [Technical]

[Pant]