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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/657 /2008-658 /2008 & E/S/634-35/08 &E/168-69/08 Date 01/07/2008

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

To :
M/S MEENAKSHI ASSOCIATES PVT. LTD.

B-58, SITE-C, UPSIDC,
INDUSTRIAL AREA,
SURAJPUR,
GREATER NOIDA.

M/S MEENAKSHI ASSOCIATES PVT. LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order** No.385-388/08,S.O.NO.676-77/ 08 Excise dated 26-6-08

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

   C.C.E. NOIDA

   B-123, SECTOR 5, NOIDA.

2. Adv. / Consult MR. ISH NARANG & SH. B.K. SHARMA,
   C/O. SH. A.K. MISRA, CON.
   B-25, LAJPAT NAGAR-III,
   N. DELHI-24
3. S.D.R.
4. ~~LCDR.~~
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. I

Excise Stay Nos. 634 – 635 of 2008 in Excise Appeal Nos. 657 - 658 of 2008
& Excise Appeal Nos. 168 – 169 of 2008

[Arising out of Order-in-Original No. 7-8/CE/Noida/2008 dated 15.01.2008 & O-I-A No. 118-119/CE/Noida/2007 dated 29.10.2007 passed by the Commissioner (Appeals) Central Excise, Noida]

Date of hearing/decision: 26.06.2008

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?	

M/s Meenakshi Associates (P) Ltd., ...Appellant
[Rep. by Mr. Ish Narang & Sh. B.K. Sharma, Co. Reps.]

Vs.

CCE, Noida ...Respondent
[Rep. by Mr. S. Kumar, DR]

STAY ORDER 676-677/08-EX
FINAL ORDER 385-388/08-EX

Per: M. Veeraiyan:

We heard both sides for a while on the stay petitions relating to Excise Appeal Nos. 657 & 658 of 2008. We were informed that there were two more Appeals Nos. 168 & 169 of 2008 relating to earlier period where the Tribunal has given stay vide order dated 20.02.2008. As we felt that these four appeals could be finally disposed of ...

2. At the outset, we find that there is no case for stay of the impugned orders in Excise Appeal Nos. 657 & 658 of 2008 as the Commissioner has merely held that the letters issued by the Superintendent against which the party came in appeal were not speaking orders. There were no demand of duties payable in pursuance of the orders of the Commissioner (Appeals).

3. The background of the case is as follows:-

a) In December 2006, the Audit team of the Central Excise Department visited the appellant factory and noticed delay in payment of duty in respect of certain months. Thereafter, in pursuance of Rule 8(3) of the Central Excise Rules, directions were issued to the appellant to pay the duty on a consignment to consignment basis and from PLA account i.e. without using the cenvat credit. Against such letters, the appellant has been filing appeals before the Commissioner (Appeals) which have been disposed of as non maintainable.

b) A show cause notice dated 03.07.2007 has been issued to the appellant demanding a sum of Rs. 1,28,96,280/- covering the period from June 2006 to March 2007 on the ground that there was delay of more than one month in paying the duty and therefore, the clearances should be treated as non-duty paid. The proposed demand of Rs. 1,28,96,280/- includes an amount of Rs. 61,07,977/- which has been already paid by the appellant from the PLA and the proposal was to adjust this amount towards the duty liability sought to be raised by the show cause notice. Against this show cause notice, the appellant moved the Settlement Commission and that vide order dated 24.05.2008, the Settlement Commission rejected their application as non-maintainable. We are informed that the appellant has moved the Settlement Commission by way of a review petition. We are not

c) Another show cause notice dated 6.5.2008 has been issued proposing a demand of Rs. 1,55,72,295/- answerable to the Commissioner and this relates to the period April 2007 to March 2008 and includes an amount of Rs. 55,16,681/- already paid from PLA. It is informed that no application has been filed before the Settlement Commission in respect of this show cause notice.

d) The Superintendent of Central Excise has issued letters directing the appellant to pay the duty on a consignment to consignment basis from PLA. As a result, several appeals got filed before the Commissioner (Appeals). The four appeals are before us against the orders of the Commissioner (Appeals). [Excise Appeal No. 168 of 2008 relates to April 2007 to June 2007. Excise Appeal No. 169 of 2008 relates to August 2007 and Excise Appeal No. 658 of 2008 relates to October 2007].

4. We have carefully gone through the records and detailed submissions made by both sides. We find that the applicant, during the disputed period, has been paying duty partly through the PLA and the rest through cenvat credit. The objection of the Department is that they ought to have paid duty only through the PLA on account of delay in paying the duty dues in respect of certain months in the past. This very issue is before the Commissioner in pursuance of the two show cause notices dated 03.07.2006 and 06.05.2008. The cases relating to the four appeals before us relate to the period covered by the show cause notice dated 06.05.2008. When the matter is pending before the Commissioner, the question of enforcing the demand in pursuance of letters issued initially by the Superintendent of Central Excise should not arise. Learned DR submitted that these letters were issued initially by way of advice and these letters have got merged with the show cause notices issued. On behalf of the company, it was submitted that the default

5. In view of the admitted position that no action is being initiated on the basis of the letters issued by Superintendent and in view of the fact that the matter requires to be adjudicated by the Commissioner, we do not find any justification to allow these appeals to continue. The Commissioner shall adjudicate the show cause notices expeditiously. Learned representative of the company agreed to co-operate in the adjudicating proceedings.

6. ~~All these~~ The stay petitions and appeals are disposed of.

[Dictated and pronounced in the open Court].

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member [Technical]

[Pant]