

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

Appeal No. E/3557/2004 - EX[DB] & E/ROA/196/08

Date 25/11/2008

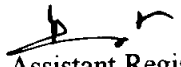
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S TOSHA INTERNATIONAL LTD.
TOSHA INTERNATIONAL LTD. E 34, IIND FLOOR,
CONNAUGHT CIRUS, NEW DELHI.
M/S TOSHA INTERNATIONAL LTD.

Appellant
Vs
Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No. 881/08 & M.O.NO.924/08- EX[DB]** dated 24-11-08
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

C.C.E. NEW DELHI, 17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI

2. Adv. / Consult *SH. RAJESH CHHIBBER, ADV.,
FA-9, NEW KAVINAGAR,
GHAZIABAD*

3 ~~S.D.R.~~
~~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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

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

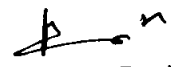
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1

15 Office Copy

16 Guard file


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/ROA 196/08, E/Appeal No. 3557/2004 -Ex(Br)

(Arising out of order in appeal No.101/CE/App1/Noida/04 dated 26.3.04 passed by the Commissioner of Central Excise (Appeals), Noida)

M/s Tosha International Ltd

Appellant
(Rep. by Rajesh Chhibber, Advocate)

Vs

CCE, Noida

Respondent
(Rep. by Shri A. Khanna, DR)

Coram: Hon'ble Mr.D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 21.11.08

Misc Order No. 924/2008-Ex /2008-Ex(BR)
Final order No. 881/2008-Ex
Per D.N. Panda:

The learned Counsel Shri Rajesh Chhibber submits that due to illness of the Counsel, this appeal was dismissed for non-appearance. According to him, if the appeal is not restored the appellant shall suffer grave injury in view of observation by the Commissioner (Appeals) in para 5 of the order. He submits that the learned Commissioner himself appreciated that the records were awaited from the appellant. Therefore, the appellant should have been given opportunity of hearing.

2. The learned DR appearing on behalf of the respondent submits that the matter is four years old and if the appeal is restored, it will ^{affect} Revenue's interest.

3. Heard both sides and perused the record. We find that the appellant would suffer if the appeal is not restored in view of the observation made by the learned Commissioner. Therefore, the appeal is restored.

4. We enquired about the status of the stay order as there is no evidence in the record as to the deposit of the directed amount of Rs.75,000/- in terms of the ^{stay}

order. The learned Counsel submits a copy of challan for revenue¹ record.

Hearing may be listed issuing notice by the Registry.

5. Although we passed the order as aforesaid, when we went through the appellate order, we noticed that the appellate authority decided the appeal for default of the appellant on 26.3.04. Non-appearance probably deprived the appellant to lead evidence and defend the case. It would be proper in the interest of justice to hear the appeal since the appellate authority has not come out with a speaking and reasoned order.

6. With the aforesaid observation, we send the matter back to the learned appellate authority to dispose the appeal by a speaking and reasoned order granting reasonable opportunity of hearing to the appellant.

7. We direct that the appellant to appear before the appellate authority on 14th December, 2008 and file an application for fixing the date of hearing in the matter. If the said application is filed, that authority shall fix a date any time during January, 2009 and dispose of the matter by 31st March, 2009 with utmost expedition. In the result, the appeal is disposed of by way of remand.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Membe

MPS*