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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/2543/2008 - EX[DB] & EM/29/09, E/S/2558/08 Date 02/02/2009

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

To :
M/S MEENAKSHI ASSOCIATES (P) LTD
B-8, SITE-C,UPSIDC, INDUSTRIAL AREA, SURAJPUR,
GREATER NOIDA.
M/S MEENAKSHI ASSOCIATES (P) LTD Appellant
Vs
C.E. NOIDA MISC O.NO. 50 /09-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 67/09 & S.O.NO.96/2009- **EX[DB]** dated 19-1-09 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 SH, C. H. SHANKAR, & SH. S. SUNIL, ADV,
   46, BANK ENCLAVE, DELHI-92

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 - 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). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 Office Copy
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Misc. Application No.29/09 of Excise Branch,
Excise Stay Application No.2558 of 2008-Excise Branch in
Appeal No.E/2543 of 2008-Excise Branch

[Arising out of Order-in-Original No.32-33/Commissioner/Noida/2008 dated 27.08.2008 by the Commissioner of Customs & Central Excise, Noida.)

Date of Hearing/ Decision:19.01.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see 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? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Meenakshi Associates (P) Ltd. ...Appellants
[Rep. by Shri C.Hari Shankar & Shri S. Sunil, Advocates]

Vs.

CCE, Noida ...Respondent
[Rep. by Shri K.K. Goel, Jt.CDR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

MISC ORDER NO 59/09-EX.
STAY Order No...96/09-EX/Dated:19.01.2009
FINAL ORDER NO. 67/09-EX

Per P.K. Das:

As the issue involved in this case is in narrow compass and, therefore, the appeal is taken up for hearing after granting stay.

2. The appellants are engaged in the manufacture of Gas Cylinders, Pressure Vessels and Heat Exchangers classifiable under sub-heading Nos.73110020 and 73090020 of the schedule to the Central Excise Tariff Act, 1985. They were availing Cenvat credit facility. It has been alleged that the appellants failed to pay the amount of duty monthly basis by due date in violation of Rule 8 of the Central Excise Rules, 2002.

3. The main contention of the ld. Advocate is that the Commissioner granted personal hearing by Notice dated 13.08.2008 to appear on 20.08.08, 21.08.08 and 22.08.08. He also submits that the appellant by its letter dated 19.08.2008 requested for adjournment of hearing as one of the show cause notices, the review application was pending before the Settlement Commission. He relied upon the decision of the Tribunal in the case of M/s. Afloat Textiles (P) Ltd. Vs. CCE, Vapi reported in 2007 (215) ELT 198 (Tribunal-Ahmd.). He also submits that the appellant paid the entire amount as defaulted except the amount of interest, which he undertakes to pay within the next week.

4. Ld. DR reiterates the findings of the Commissioner. He submits that the appellants are liable to pay the amount, which they have paid from their Cenvat Account, during the material period. It is a clear case of violation of Rule 8 (3A) of the Rules. He relied upon the decision of the Tribunal in the case of Commissioner of Central Excise Vs. Ralson Carbon Black Ltd. reported in 2008 (229) ELT 113 (T-D).

5. After hearing both the sides and on perusal of the records, we find force in the submission of the ld. Advocate that the proper opportunity of hearing was not granted to the party. It is seen from the impugned order that the hearing was fixed for three dates by one notice of hearing dated 13.08.2008 and the appellant requested for adjournment by this letter dated 19.08.2008. Section 33 A of Central Excise Act, 1944 provides Adjudication procedure. Proviso to Section 33 A of the Act stipulates that no such adjournment shall be granted more than three times to a party during the proceeding. In the present case, we find that the appellant sought adjournment by their letter dated 19.08.2008, which cannot be treated as adjournment for three times.

6. We do not appreciate such approach of the Original Authority to issue one hearing notice for three ~~times~~ dates, which is not in accordance with principal of natural justice. The essence of justice requires that a person who is to decide must give the parties a fair hearing before him enabling them to state their case and view. Fairness is a flexible, pragmatic and relative concept and not a rigid, ritualistic or sophisticated abstraction. In this case, the appellants have not given proper opportunity of hearing to defend the case. Accordingly, we set aside the impugned order and the matter is remanded to the Commissioner to decide afresh after granting proper opportunity of hearing. In this context, we direct the appellant to appear before the Commissioner of Central Excise on **<u>16.02.2009 at</u>**

<u>11.00 A.M</u>, who will fix the date of hearing and to decide the matter expeditiously. The appeal is allowed by way of remand.

7. Misc. application is also disposed of.

Order dictated & pronounced in open court on 19.01.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.