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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/364 /2009 - EX[DB] Date 06/04/2009
E/S+/ 380/09

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

To :
M/S NUCON SWITCHGEARS PVT. LTD.
VILLAGE MALIPUR G.T.ROAD, DORAHA,
LUDHIANA.

M/S NUCON SWITCHGEARS PVT. LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order** No.261/2009 EX[DB] Dt.31.3.09 SO/289/09
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. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

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

E/Stay 380/09, E/Appeal No.364/09-Ex(Br)

(Arising out of order in appeal No.15/cE/Ldh/09 dated 22.1.09 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

M/s Nucon Switchgears (P) Ltd — Appellant

Vs

CCE, Ludhiana — Respondent

Appeared for the Appellant : Shri Sudhir Malhotra, Advocate
Appeared for the Respondent : Shri B.S. Suhag, DR

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

Date of Hearing: 24.3.09

STAY Order No. 289/09-Ex /2009
FINAL ORDER NO 261/09-EX
Per D.N. Panda:

The learned Counsel Shri Sudhir Malhotra submits that when the stay application was filed before the learned Commissioner (Appeals), he rejected the same without appropriate appreciation of facts of the case. Rejection was done by order dated 14.11.08. He made another application dated 8.12.2008 for modification of the above stay order. That application was disposed by the learned Commissioner in terms of order dated 22.1.09.

2. The learned Counsel pleads that when the modification application was made, a stay order was passed by the Tribunal in

the case of Emkay Industries on 4.11.2008. This order has granted waiver of pre-deposit in the case of Emkay Industries. Therefore, M/s Emkay Industries being supplier of inputs to the appellant, this appellant should not have been called upon to make any pre-deposit.

3. Learned DR submits that appellant may not get similar benefit what the Emkay Industries Company was allowed. Therefore, when the modification application was considered, learned Commissioner (Appeals) took appropriate decision. Therefore, appellant should make pre-deposit.

4. Heard both the sides and perused the record.

5. When the appellant was given opportunity for hearing of the modification application, the appellant did not place Tribunal's stay order dated 4.11.08 before the Commissioner (Appeals). It appears that on the basis of the Tribunal's order, the appellant made an application on 8.12.08.

6. We have gone through the stay order passed by the Tribunal appearing at page 70-71 of the appeal folder. We are unable to appreciate from the contents of the order that how the same shall grant benefit to the appellant. Without expressing any opinion at this stage, we direct the appellant to make pre-deposit of Rs.10 lakhs (Rupees Ten lakhs only) within four weeks from today and make compliance before the learned Commissioner (Appeal) on 28.4.2009. The appellant shall also make an application before the Commissioner (Appeals) for fixing a date of hearing. On such application, appropriate date may be fixed and learned Commissioner shall dispose of the appeal following due process of

justice, passing a speaking and reasoned order. If our aforesaid direction is carried out, the appellant gets right of hearing of appeal.

7. In the result, both the stay application and appeal are disposed of remanding the matter to the learned Commissioner (Appeals).

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*