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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

4

Appeal No. E/326 /2009 - EX[DB] & E/S/339/2009-EX Date 12/05/2009

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

To :
SH. PRAVEEN KUMAR GARG,

M/S LAKRA OIL TRADING COMPANY, WZ-14D,
MANOHAR PARK, ROHTAK ROAD,
NEW DELHI-110026.

SH. PRAVEEN KUMAR GARG, Appellant

Vs

C.C.E. CHANDIGARH STAY ORDER NO.404/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 297/2009- **EX[DB]** dated 18-3-09

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. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult

MR.S. JAINA & ASSOCIATES

84, DARYA GANJ, NEW DELHI.

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 326 of 2009

[Arising out of the Order-in-Appeal No. 366/CE/LDH/2008 dated 17/11/2008 passed by The Commissioner (Appeals), Chandigarh.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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?	:	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	No

Shri Praveen Kumar Garg — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Ms. Seema Jain, Advocate – for the appellant.

Shri C.S. Rajput, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 18/03/2009.

Final Oral Order No. 397/09-EX Dated : ____________

Per. Justice R.M.S. Khandeparkar :-

Heard the learned Advocate for the appellant and the learned DR.

2. It is not necessary to go into various rival contentions sought to be raised in the matter and suffice to refer to only one issue on which the appeal can be disposed of.

3. It is undisputed fact that proceedings against the appellant have been initiated on the ground that he was the Manager of M/s Lakra Oil Trading Company, New Delhi and he abetted the fraudulent availment of Cenvat credit by M/s Adhunik Alloys Private Limited, Ludhiana. It is also an undisputed fact that the appeal filed by M/s Adhunik Alloys Private Limited before the Commissioner (Appeals) [appeal No. 34 of 2007] in relation of the allegation of fraudulent availment of Cenvat credit by said M/s Adhunik Alloys Private Limited is still pending for hearing and disposal before the Commissioner (Appeals).

4. Abetment pre-supposes commission of an act which had been abetted. Without commission of such act, question of abetment thereof cannot arise. A person cannot be said to have abetted fraudulent act by another, unless such fraudulent act is committed or alleged to have attempted to commit by such other person. Only upon commission or attempt to commit such fraudulent act, there could be a case of abetment thereof by the former. *De hors* the act which is alleged to have been abetted, there cannot be an act of abetment.

5. Being so, if the appellant is accused of abetment of fraudulent availment of Cenvat credit by the company of which he was the

Manager, then unless the issue relating to fraudulent availment of Cenvat credit by the company is decided at the first instance, the appeal filed by the abettor of such act cannot be decided, as otherwise, it would amount to placing the cart before the horse.

6. Being so, we fail to understand as to how the Commissioner (Appeals) could have independently heard and decided the appeal filed by the appellant who has been alleged to have abetted the fraudulent availment of Cenvat credit by M/s Adhunik Alloys Private Limited, unless and until the allegation against the said company is considered and a decision thereon is taken by the authority. The learned DR has fairly conceded that both the appeals are required to be heard and decided simultaneously.

7. In the facts and circumstances of the case, therefore, without going into the merits of the case, we hereby set aside the impugned order and remand the matter to the Commissioner (Appeals) with the direction to dispose of the appeal in question along with the appeal filed by M/s Adhunik Alloys Private Ltd. [appeal No. 34 of 2007]. Accordingly, this appeal stand disposed off.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Stay Application No. 339 of 2009
E/326/09

Shri Praveen Kumar Garg — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Ms. Seema Jain, Advocate – for the appellant.

Shri C.S. Rajput, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 18/03/2009.

STAY Oral Order No. 409/09-EP Dated : ______________

Per. Justice R.M.S. Khandeparkar :-

In view of the disposal of the appeal, the stay application does not survive and stands disposed off.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK