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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/810 /2008 - EX[DB] E/M/275/2009-EX
E/253/2009 E/S/255/2009

Date 29/05/2009

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

To :
M/S SURAYA SUGAR MILLS LTD.
SARDARNAGAR GORAKHPUR.

M/S SURAYA SUGAR MILLS LTD. Appellant
Vs
C.C.E ALLAHABAD Respondent

STAY ORDER NO.471/2009-EX
MISC ORDER NO.368/2009-EX

I am directed to transmit herewith a certified copy of **Final order No.** 392&393/2009- **EX[DB]** dated 18-5-09

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 ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
MR.S.P. OJHA
299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 810 /2008- Ex(BR)
Excise Misc. Application No. 275 /2009 Ex(BR)

[Arising out of Order-in-Original No. MP/2/2008-Tech/2/2008 dated 1.2.2008 passed by Commissioner of Central Excise, Allahabad.]

Excise Appeal No. 253 /2009- Ex(BR)
Excise Stay Application No. 255 /2009 Ex(BR)

[Arising out of Order-in-Appeal No. 112/CE/Appl/Alld/2008 dated 20.11.2008 passed by Commissioner (Appeals) Central Excise, Allahabad.]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, 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? : Yes
2. Whether it should 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 Departmental authorities? : No

M/s. Saraya Sugar Mills Ltd. — Appellant

Vs.

Commissioner of Central Excise
Allahabad — Respondent

Appearance:

Shri S.P. Ojha, Consultant, Advocate for the Appellant
Shri Virender Choudhary, SDR for the Respondent

CORAM:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 18.5.2009

MISC ORDER NO. 368 / 09-EX

FINAL **ORAL ORDER NO.** 392-393 / 09-EX

STAY ORDER NO 471 / 09-EX

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Heard at length the learned consultant for the appellant and learned DR. Since the common question of law and facts arise in all these matters, they were heard together and are being disposed of by this common order.

2. After hearing the matters for some time, we found that no purpose would be served by merely deciding the stay and misc. applications, and allowing the appeals to remain pending, as in our considered opinion, in the facts and circumstances of the case, the matter require reconsideration by the Commissioner of Central Excise and therefore, the impugned orders are required to be set aside and matters remanded for decision afresh. In this view of the matter, we hereby allow the applications and proceed to decide the appeals without insisting for requirement of pre-deposit.

3. In appeal No. 253/09, the appellant challenges the order demanding the duty to the tune of Rs.33,93,368/- under Section 11A(2) of Central Excise Act, 1944 along with interest thereon under section 11AB of the said Act and penalty of equal amount under Section 11AC read with Rule 25 of the Central Excise Rules and the order passed by the Commissioner (Appeals) confirming the said order of the adjudicating authority while dismissing the appeal filed by the appellant.

4. In Appeal No. 810/2008, the appellant challenges the order of the Commissioner Central Excise, dismissing the application for remission filed by the appellant under Section 21 of the Central Excise Rules, 2002.

5. Undisputedly, this is a second round of litigation, the first round having concluded under an order dated 10.5.06 of this Tribunal. Having found that the show cause notice issued demanding the duty was disposed of ignoring the application for remission of duty filed by the appellant, the Tribunal under order dated 10.5.06 had set aside the order of demand of duty and had directed Revenue authorities to decide the application for remission of duty along with proceedings in relation to demand of duty. To our surprise, however, we find that the application for remission was disposed of under order dated 31.1.08 by one authority whereas the proceedings regarding demand of duty were concluded under order dated 20.2.2008 by another authority.

6. Learned DR tried to justify the actions on the part of the Revenue authorities by contending that the jurisdiction to deal with the adjudication proceedings vests with the Additional Commissioner whereas the proceedings in relation to application for remission vests with the Commissioner and that accordingly the orders have been passed bearing in mind the jurisdiction of each of the authorities. The learned DR however, candidly admitted that the Commissioner could have called for the records from the Additional Commissioner in relation to adjudication proceedings and could have disposed of both the matters by himself. Indeed, it cannot be disputed that the Commissioner ought to have adopted such a procedure in

view of specific direction by the Tribunal under order dated 10.5.06 to the effect that both the proceedings should be disposed of simultaneously.

7. In the facts and circumstances of the case, it was absolutely necessary for the Revenue authority to consider the defence of the appellant in response to show cause notice issued for demand of the duty, along with the claim of the appellant for remission of duty. Obviously, the defence to the show cause notice and justification for remission cannot be different from one another taking into consideration the facts alleged by the appellant. In that view of the matter also, it was necessary for the Revenue authorities to decide both the proceedings together after hearing the appellant.

8. The grievance has also been made on behalf of the appellant that no hearing was granted in the matter of remission application before passing the impugned order. In that connection, attention has been drawn to Section 33A of the said Act. Undoubtedly, section 33A refers to adjudication proceedings. Even than, it cannot be disputed that in every matter, principles of natural justice are required to be complied with. Being so, once the application seeking relief is filed before any quasi-judicial authority, the application should not be disposed of without affording to the applicant an opportunity of being heard in the matter. In the matter before us, no such opportunity of hearing was granted to the appellant in the matter of claim for remission of duty. On this ground also, the impugned order on remission application could not be sustained.

9. The learned Advocate for the appellant also submitted that no proceeding before the Revenue authorities can be concluded without issuing show cause notice. In that connection, reliance is sought to be placed in decision of Apex Court in the matter of Sahara India (Firm) vs Commissioner of Income Tax, 2008 (226) ELT 22 of the Bombay High Court in the matter of Johnson & Johnson Ltd vs. Dy. Chief Controller of Imports and Exports [2003 (154) ELT 370] and of the Tribunal in the matter of Jeet Ram Enterprises vs. CCE, Delhi-I reported in [2006 (199) ELT 244].

10. As already observed above, it cannot be disputed that in each and every case, which can ultimately result in an order prejudicial to the interest of a party, then the same should not be passed unless such a party is heard in the matter. However, we are unable to accept the contention on behalf of the appellant that in each and every case, the proceedings have to commence by way of issuance of show cause notice. Undoubtedly, the requirement of issuance of show cause notice could be one of the mode of compliance of the principles of natural justice. However, it is not necessary in each and every case to issue show cause notice for compliance of principles of natural justice. The rule of natural justice merely states that party should not be condemned unheard. Being so, in what form the party should be heard would depend upon facts and circumstances of each case. There is no universal rule that in each and every case for compliance of natural justice, the show cause notice is a must.

11. The provisions of law comprised under Central Excise Rules, 2002 and dealing particularly with the matters pertaining to the application for remission, nowhere prescribe any show cause notice to be issued to the party for disposal of such application. In other words, the statutory provisions in relation to the matters pertaining to application for remission do not prescribe show cause notice.

12. The Apex Court in Shara India (supra) was dealing with the meaning and scope of term "natural justice". After taking note of the decision in A.K. Kraipak & others vs. Union of India and others reported in [1969 (2) SCC 262]; Swadeshi Cotton Mills vs. Union of India [1981 (1) SCC 664]; Olga Tellis vs. Bombay Municipal Corporation [1985 (3) SCC 545]; Menaka Gandhi vs. Union of India [AIR 1978 SC 597] and host of other cases on the subject of natural justice, the Apex Court held that "Initially, it was a general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in State of Orissa vs. Binapani Dei and others, the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power excludes its application by express language." The decision is not on point which is sought to be raised on behalf of the applicant. It is the decision whereby the

Apex Court has ruled that principles of natural justice are applicable not only in judicial and quasi-judicial but also in administrative matters which involve civil consequences.

13. The Bombay High Court in Johnson & Johnson Ltd. case has held that in order to comply with the requirement of compliance of principles of natural justice, the decision maker must not act on material coming on record subsequent to the stage of hearing or after oral hearing, which the other side had not seen and had no chance to comment upon. It was observed that it is elementary rule of natural justice that party must be given a fair opportunity to collect and controvert any relevant material brought forward to his prejudice. The decision nowhere speaks of need of show cause notice in each and every matter.

14. The Tribunal in Jeet Ram Enterprises case was dealing with matter wherein the penalty was sought to be imposed in terms of Section 11AC read with Rule 173Q. In the facts of that case, it was observed that it is settled law that issuance of show cause notice to a person is not a mere formality and that the show cause notice should intimate the recipient about the allegations.

15. In a case in hand, as far as remission application is concerned, the proceedings came to be initiated at the instance of the applicant which is an added factor to justify non- requirement of issuance of show cause notice. A case for show cause notice could arise only when proceedings to the prejudice of the addressee would arise at the instances of an authority. The proceeding which commenced on an application by the party, would not

require any show cause notice on the subject on which application is filed, unless there is specific requirement in that regard under a statutory provision. There being no such requirement for dealing with the application for remission, question of show cause notice cannot arise.

16. For the reasons stated above, therefore the impugned orders are hereby set aside and matter remanded to the Commissioner, Allahabad to deal with the same i.e. the matter related to demand of duty as well as the one relating to the application for remission of duty simultaneously and after hearing the parties.

17. Considering the fact that the matters relate to the year 2002, the authorities are expected to dispose of the same as expeditiously as possible and in any case before December, 2009. Both the parties are expected to extend co-operation to the authorities for expeditious disposal of the matters.

18. The Appeals and the stay applications stand disposed of in above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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