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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/746 /2009 - EX[DB]
E/S/734/2009-EX

Date 26/06/2009

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

To :
MODI VANASPATI MFG CO
MODINAGAR, GHAZIABAD.

MODI VANASPATI MFG CO — Appellant

Vs

C.C.E. GHAZIABAD — STAY ORDER NO.592/2009-EX — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 431/2009- **EX[DB]** dated 15-6-09

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. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302

2. Adv. / Consult

~~MR.P.C.JAIN~~

~~332, ARAVALI APARTMENTS, ALAKNANDA, NEW DELHI-19~~

SH. L.P. ASTHANA, ADV.,
R-163, IIND FLOOR,
G.K. PART-I, N. DELHI-48

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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 746 of 2009-Ex
Excise Stay Application No. 734 of 2009

[Arising out of Order-in-Appeal No. 289/CE/GZB/2008 dated 16.12.2008 passed by Commissioner (Appeals) Central Excise, Ghaziabad]

For approval and signature:

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

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Modi Vanaspati Mfg. Co. Appellant

Vs.

Commissioner of Central Excise Ghaziabad Respondent

Appearance:

Mr. L.P.Asthana with Shri Abhishek Jaju, Advocates for the Appellant
Mr. K. P.Singh, DR for the Respondent

CORAM:

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

Date of Hearing/Decision: 15.6.2009
Stay order No 592/09 -EX
Final **ORAL ORDER NO . 431/09-EX**

Per P.K.Das (for the Bench):

After hearing both the sides, we find that the appeal may be decided after granting stay. Hence, appeal is taken up for hearing.

2. The relevant facts of the case, as per the record in brief, are that the appellants were engaged in the manufacturing of vegetable products. They have collected distribution charges from their customers, which was not included in the assessable value. A show cause notice dated 29.3.89 was issued for demanding duty for the period February, 1981 to February, 1987, (excluding May, 1981 to November, 1981 against which separate notice was issued) proposing as to why deductions claimed on account of bank interest on finished stock at depots, distribution charges realized, difference of sales price in the depot, freight charges otherwise than the actual freight from the factory gate to the place of delivery should not be disallowed. The original authority vide adjudication order dated 28.2.2008 confirmed the demand of duty of Rs.46,42,964/- and finalised the provisional assessment for the period February, 1981 to April, 1981 and December, 1981 to February, 1987. The applicant filed an appeal along with stay application before the Commissioner (Appeals). By stay order dated 19.11.2008, the Commissioner (Appeals) directed the applicant to pre-deposit a sum of

Rs.32 lakhs under section 35F of the Central Excise Act, 1944. The applicant filed application for modification of stay order. Commissioner (Appeals) rejected the appeal for non-compliance of the stay order.

3. Learned advocate submits that the adjudication order was passed without affording any personal hearing. In this context, he drew the attention of the Bench for relevant portion of the stay order of the Commissioner (Appeals) as under:

> "The issue regarding deductions claimed requires detailed examination to arrive at the final decision. The issue of denial of natural justice is also a vital point for decision at this stage which may take more time".

He further submits that in the show cause notice there is no proposal for finalisation of the assessment. It is his submission that even by order dated 23.7.2001, the Hon'ble High Court decided the matter, there is a long delay of finalisation of the assessment. He also further submits that they are contesting the demand of duty on merit as well as on limitation.

4. The learned DR submits that the applicant admitted the dues before the Commissioner (Appeals) as revealed from the statement annexed to the show cause notice. He also submits that they have admitted the dues in the submission placed before the Hon'ble High Court. He further submits that the applicant already admitted their dues and therefore Commissioner (Appeals) rightly directed to pre-deposit the amount of Rs. 32 lakhs for hearing of the appeal.

5. After hearing both the sides, we find that admittedly the matter was decided by the original authority without giving any hearing after long delay

of about 10 years after passing of order of High Court. We are unable to accept the reasoning of the Commissioner (Appeals) that point of natural justice would be taken up at the time of appeal hearing. The Hon'ble Delhi High Court vide order dated 23.7.01, observed that the matter is pending before the appellate Commissioner. Since factual aspects are to be considered in the background of decision of the Apex Court in Government of India vs. Madras Rubber Factory Ltd. [1995 (77) ELT 433 (SC)], it would be appropriate that the matter is decided by the appellate Commissioner afresh after due notice to the applicant. It appears that the order of High Court was not against present show cause notice. Prima facie, there is no material available of admission of the applicant of the government dues. In any event, in this factual background, we are of the view that it is a fit and proper case to decide the matter on merit without insisting any pre-deposit.

6. In view of the above discussion, , we set aside the impugned order. As the order was passed by the Commissioner (Appeals) without going into the merits of the case, we remand the matter to the Commissioner (Appeals) to decide on merit without insisting on any pre-deposit.

7. The appeal is allowed by way of remand. Stay application is disposed of.

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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