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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/2644/2008-2646/2008 - EX[DB] & E/M/354-3356/2009-EX

Date 07/07/2009

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

To :
M/S.KOMAL ENTERPRISES
BLOCK-A,2NT FLOOR,E.P.I.P.,
SIDCO INDUSTRIAL COMPLEX,
BARI BRAHMANA,JAMMU
KOMAL ENTERPRISES

Appellant
Vs
Respondent

C.C.E. JAMMU

MISC ORDER NO.440-442/2009-EX

I am directed to transmit herewith a certified copy of **Final order No. 446-448/2009-EX[DB]** dated 29-6-09

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. JAMMU
OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.
2. Adv. / Consult

NONE

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision:29.06.2009

Excise Appeal Nos. 2644, 2645 & 2646 of 2008
[Arising out of order-in-appeal No. 717-719/CE/Appl./Jal/2008 dated 12.11.2008 passed by the Commissioner of Central Excise (Appeals), Jallandhar, Chandigarh].

M/s Komal Enterprises — Appellant

Vs.

CCE, Jammu — Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	No
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?	Yes

Appearance:

Appeared for the Appellant – Request for adjournment.
Appeared for the Respondent – Shri B.S. Suhag, DR

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

Final Oral Order No. 446-448/09-Ex.

Per Shri Justice R.M.S. Khandeparkar:

Since common questions of law and facts arise in all these appeals, they were taken up for hearing together and being disposed of by this common order.

2. Since none has appeared for the appellants, we have gone through the record and with the help of learned DR and we find that in all these matters the proceedings before the adjudicating authority commenced pursuant to the applications filed by the appellant for refund claim on the basis of Notification No. 56/2002-CE dated 14.11.2002. The Assistant Commissioner who heard the matters partly allowed the refund claim while partly rejected the same. Being aggrieved by the order rejecting the claim the party filed three different appeals before the Commissioner (Appeals) at Chandigarh. Under order dated 21.8.2008, the appellants were directed to deposit the duty as pre-deposit within thirty days. However, no duty amount was deposited within the said period. On the contrary, the application came to be filed on 19.09.2008 for modification of order dated 21.8.2008. The Commissioner (Appeals) however, by the impugned order while dismissing those applications also dismissed the appeals on the ground that the appellants had failed to comply with the provisions of Section 35F of the Central Excise Act, 1944.

3. There is no doubt that Section 35F of the said Act clearly requires the appellant to deposit the amount demanded as duty or penalty or interest by the adjudicating authority under the order which has made the subject matter of the appeal, unless waiver in that regard is permitted by the appellate authority. However, the objection to deposit in terms of section 35F would arise only in case where the order sought to be challenged requires the appellant to pay certain amount under such order. In a case where the order does not require the appellant to pay the amount question of such objection to deposit the amount does not arise.

4. Perusal of the orders passed by the adjudicating authority in the matter in hand would reveal that they are either to grant or reject the refund. The appeals

were obviously to the extent the claim for refund was rejected and not allowed. The orders as far as they allowed the claim for refund, the same were not challenged by the party. Being so, under the orders sought to be challenged before the Commissioner (Appeals) there was no amount quantified as due and payable by the appellant to the Department.

5. It was sought to be contended that the adjudicating authority ought to have directed the amount in respect of which the claim was rejected to be paid by the appellant to the Department as the amount claimed related to the credit which was taken by the appellants. However, the fact remains that the adjudicating authority had not passed such direction. In the absence of such direction, it cannot be said that the appellants were under any ~~objection~~ obligation to deposit any amount while filing the appeal. In this view of the matter, the appellant is justified in contending that the Commissioner could not have directed under Section 35F to deposit or to reject the appeals but should have proceeded to hear the appeals on merits. Hence, The impugned order passed by the Commissioner (Appeals) dismissing the appeals under Section 35F of the Act are hereby set aside and the appeals are remanded to the Commissioner (Appeals) to be decided on merits. The Commissioner (Appeals) shall dispose of all the matters on merits after hearing the parties. The Commissioner (Appeals) to do so as expeditiously as possible and in any case prior to 31st March 2010. The appeals are accordingly stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision:29.06.2009

Excise Misc. Application Nos. 354 to 356 of 2009 in
Excise Appeal Nos. 2644, 2645 & 2646 of 2008

M/s Komal Enterprises — Appellant

Vs.

CCE, Jammu — Respondent

Appearance:

Appeared for the Appellant – Request for adjournment.
Appeared for the Respondent – Shri B.S. Suhag, DR

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

misc Oral Order No. 440-442/09-EX

Per Justice R.M.S. Khandeparkar:

All these applications are for restoration of Excise Appeal Nos. 2644, 2645 & 2646 of 2008. Application nowhere states as to when the appeals were dismissed. The applications were filed on 15.04.2009. After filing the appeals, in fact matter came up for hearing on 04.05.2009 and considering the records as none had appeared for the appellants, matter was adjourned and fixed for hearing on 29.06.2009. The records nowhere discloses the appeals have been dismissed either for default or for non compliance of provisions of Section 35F of the Central Excise Act, 1944. In the circumstances the applications are dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/