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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

Date 29/09/2009

Appeal No. E/2108/2009 - EX[DB]
E/S/2192/2009-EX

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

To :
M/S AMARTEX INDUSTRIES LTD
PH-1, 365 INDUSTRIAL AREA, PANCHKULA,
HARYANA.
M/S AMARTEX INDUSTRIES LTD

Appellant
Vs
Respondent

C.C.E. DELHI II

STAY ORDER NO.962/2009-EX

I am directed to transmit herewith a certified copy of **Final order No. 730/ 2009 EX[DB]** dated 11-9-09

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. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
MR.A.S.GILL
3355/SEC-21, CHANDIGARH
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)

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

Date of hearing/decision: 11.09.2009

Excise Appeal No. 2108 of 2009 with Excise Stay No. 2192 of 2009
[Arising out of order-in-appeal No. 108/ANS/GGN/2009 dated 21.4.2009 passed by the Commissioner of Central Excise (Appeals) Delhi-III).

M/s Amartex Industries Limited — Appellant

Vs.

CCE, Delhi-III — 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 – Shri A.S. Gill, Advocate
Appeared for the Respondent – Shri Surinder Shah, DR

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

Stay Oral Order No. 968/09-EX

Per M. Veeraiyan: Final Oral Order No 730/09-EX

Heard both sides on the stay petition for a while and in view of the order we propose to pass, we waive the pre-deposit of the dues as per the impugned order and proceed to dispose of the appeal finally.

2. The appellant is a manufacturer of readymade garments with brand name (unregistered) and the same became dutiable w.e.f. 30.04.2001. The original authority dropped proceedings on the show cause notice demanding duty of Rs.19,18,397/-. However, on appeal by the department the Commissioner (Appeals) allowed the appeal of the department and confirmed demand of Rs.18,85,298/- and imposed equal amount as penalty.

3. Learned Advocate for the appellants submits that the Commissioner (Appeals) has decided the matter ex-parte ignoring the request for grant of personal hearing at Panchkula instead of at Gurgaon. He also raises several issues on merits having a bearing on the demand. It is claimed that the value adopted is MRP without any abatement and if correct values are adopted, they will be eligible for exemption upto rupees one crore in value of clearances during the financial year and the original authority has correctly passed the order. As the Commissioner (Appeals) passed an ex-parte order, they had no opportunity to raise these issues before Commissioner (Appeals) who without giving valid reasons interferred with the findings of the original authority.

4. Learned DR submits that the appellants were granted personal hearing on four occasions and they had not responded.

5. We have carefully considered the submissions from both sides. At the outset, we notice that the original authority has dropped the demand against the appellant except to the tune of Rs. 33,099/-. He dropped the demand of Rs. 10,63,232/- for the year 2001-2002 and Rs.8,22,066/- for the year 2002-2003. The Commissioner (Appeals) however, reversed the decision and he has merely recorded that personal hearings in the matter were fixed for 12.8.2008, 07.09.2008, 29.09.2008 and 15.01.2009 and that nothing was heard from either of the two sides. He also observed that the department as well as the respondent were not interested to avail of the opportunity of the personal hearing. After recording such observation he went ahead and set aside the order of the original authority. There is no reference to the request made by the appellant for personal

hearing at Panchkula and no decision as to whether the same was accepted or rejected appears to have been taken. If he has rejected the request, a communication to that effect should have been given to the party. Therefore, we find that the order has been passed in violation of principles of natural justice without affording an opportunity to the party while passing the order contrary to the order of the original authority which was in favour of the party. Therefore, we find it appropriate to set aside the order of the Commissioner (Appeals) and remand the matter for fresh decision after granting reasonable opportunity of hearing to both sides. We clarify that we have not expressed any views on the merits of the case and that all issues are open for fresh decision by the Commissioner (Appeals).

6. The appeal is remanded on the above terms. Stay petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/