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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/844 /2009-845 /2009 - EX[DB] WITH E/M/801-802/2009-EX   Date 18/12/2009

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

To :
SHRI. SUDHIR JAMNEJA, M.D OF M/S GLASS
PLASTICS & CHEMICALS PVT. LTD.
A-5/5-A, ASHOK NAGAR GHAZIABAD (U.P.)

Appellant

Vs

C.C.E. NOIDA   MISC ORDER NO.748-749/2009-EX   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1390-1391/ 2009 EX[DB] dated 14-12-09 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult SH. BISWAS SINGH, CLERK,
   C/O. SH. A.P. MATHUR, ADV.,
   167, TAGORE TOWN
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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)

19. GLASS PLASTICS & CHEMICAL PVT LTD
A-5/5-A, ASHOK NAGAR GHAZIABAD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

DATE OF HEARING : 14.12.2009
DATE OF DECISION : 14.12.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. 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 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

(i) Excise Appeal No. 844 of 2009 with
Excise Misc. Application No. 801 of 2009

Shri Sudhir Jamneja .... **Appellant**
(Rep by Sh.Biswas Singh, Clerk of Appellant)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Surender Shah, DR)

AND

(i) Excise Appeal No. 845 of 2009 with
Excise Misc. Application No. 802 of 2009

(Both arising out of Order-in-Original No. 34/Aayukt/Noida/2008 dated 27.08.2008 passed by the Commissioner of Central Excise, Noida).

M/s Glass Plastic & Chemical Indus (Pvt.) Ltd. .... **Appellant**
(Rep by Sh.Biswas Singh, Clerk of Appellant)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Surender Shah, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 1390 - 1391 / 09-EX
MISC ORAL ORDER NO. 748 - 749 / 09 - EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Shri Biswas Singh, clerk of the applicants, present on behalf of the applicants. Shri Surender Shah, DR, present for the respondent. The representative for the applicants stated that, he has nothing to say regarding the applications in question and the advocate has requested for further time to do the needful.

2. By these applications, the applicants are praying for stay of the order passed in Excise Appeal Nos. 844 & 845 of 2009, while disposing of the stay application nos. 820 & 821 of 2009 on 3rd June, 2009, on the ground that the applicants have filed appeal before the Allahabad High Court and the same has been admitted on the substantial questions of law framed in the memorandum of appeal. The substantial questions of law which have been framed in the memorandum of appeal are as under :

(i) Whether the Hon'ble Tribunal is justified not to recall the stay order dated 03.06.2009 when the stay cum waiver application was listed for hearing for the first time and inspite of the application filed by the appellants immediately after having the knowledge of the exparte order and the fact that the counsel did not appear on 03.06.2009 to pass the stay cum waiver application inspite of giving assurance that he will be appearing and pressing the application.

(ii) Whether the Hon'ble Tribunal is justified in observing that the appellants ought to have appeared on 03.06.2009 themselves inspite of engaging the counsel to represent them in order to instruct the counsel their capability to deposit the extent of adjudged amount when admittedly the counsel was engaged in March, 2009 and the fact is obvious that the counsel have been instructed at the time of engagement itself?

(iii) Whether the reasoning given by the Hon'ble Tribunal in not recalling the order dated 03.06.2009 can be sustained by any stretch of imagination or the law on the subject?

(iv) Whether the Hon'ble Tribunal is justified in rejecting the application for recalling the order dated 03.06.2009 without giving a finding to the fact that the absence of the counsel of the appellants on 03.06.2009 was intentional and there was no justification for the absence of the appellants and the precaution taken by the appellants to instruct his counsel to appear on 03.06.2009 was not sufficient?

(v) Whether the Hon'ble Tribunal was justified in passing the exparte stay order dated 03.06.2009 without pursuing the appeal and scrutinizing the authenticity of the impugned order themselves?

(vi) Whether the Hon'ble Tribunal is justified in deciding the stay cum waiver application on the findings of the Commissioner without realizing that the order of the Commissioner was under challenge before them?

(vii) Whether the Hon'ble Tribunal is justified in directing the appellants to deposit the adjudged amount of penalties when the main noticee and its officers and Directors who have allegedly wrongly availed the Cenvat Credit have been exonerated from imposition of penalties by the settlement Commissioner?

(viii) Whether the Hon'ble Tribunal is justified in deciding the stay cum waiver application without taking into account the contentions of the appellants?

3. Undisputedly, there is no stay granted to any of the orders passed by this Tribunal in the said Excise Appeal Nos. 844 & 845 of 2009, while admitting the appeal by the Allahabad High Court. Considering the same, it was made clear to the applicants, time and again, under various orders including order dated 08th July, 2009 and 18th September, 2009 that in view of failure to comply with the requirement regarding pre-deposit, the consequences contemplated under Section 35-F of the Central Excise Act, 1944 are bound to follow. However, opportunity was given to the applicants to satisfy the Tribunal as to why the appeals should not be dismissed for non-compliance of the order regarding pre-deposit and for that reason the matter was adjourned twice. Even, on 16th November, 2009, when the matter came up for hearing, none appeared for the applicants and the matter was adjourned to this date. No satisfactory explanation is forthcoming as to why the appeals should not be dismissed.

4. The question of grant of stay by this Tribunal to the order passed in the stay applications does not arise. It is pertinent to note that, the applicants had preferred appeal against the order

passed in stay applications and though the appeal has been admitted on the substantial questions of law framed therein, the Hon'ble Allahabad High Court has not granted any stay to the order passed in relation to the requirement of pre-deposit. As the law stands, failure to comply with the order relating to pre-deposit results in dismissal of the appeal itself, unless reasons for not doing so are disclosed. In the case in hand, no such reasons are disclosed. The question of Tribunal granting stay to its order regarding pre-deposit and that too in spite of giving number of opportunities to file compliance report does not arise at all. In the facts and circumstances of the case, no purpose will be served by keeping the appeal pending, ignoring the mandate of Section 35-F of the Central Excise Act, 1944 and the fact that the High Court has not granted any stay in the matter, even though the appeal is admitted. As the law mandates dismissal of appeal in the facts of the case and as it would not affect, the proceedings in High Court in any manner, while dismissing these applications, we are constrained to dismiss the appeals themselves for the reasons stated above. Accordingly, the applications are dismissed along with Excise Appeal Nos. 844 & 845 of 2009.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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