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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/645 /2008 - CU[DB] Date 17/11/2008

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

To :
M/S SIVIAN CONSTRUCTION CO.
VPO, SIVIAN,DISTT. BATHINDA.

M/S SIVIAN CONSTRUCTION CO. Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/340 2008 CU[DB] dated 11.11.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Stay Order No ST/442/2008

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Service Tax Appeal No. 645 of 2008
Service Tax Stay Application No. 2022 of 2008

[Arising out of Order-in-Appeal No. 180/C E/Ldh/2008 dated 2.7.2008 passed by Commissioner (Appeals) Central Excise & Service Tax, Chandigarh]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : NO
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? : Yes

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M/s. Sivian Construction Co. — Appellant

Vs.

Commissioner of Central Excise
Ludhiana — Respondent

Appearance:

Mr. Vikrant Kakaria, Advocate for the Appellant
Mr. Suneel Kumar, DR for the Respondent

CORAM:

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

Date of Decision : 11.11.2008

Final **ORDER NO. ST/340/08**
Stay Order No ST/442/08

Per M. Veeraiyan (for the Bench):

Heard both sides on the stay petition for a while and considering the nature of the order passed by the Commissioner (Appeals) we deem it proper to waive pre-deposit of the dues as per the impugned order and decide the appeal finally.

2. We find that the Commissioner passed an ex-parte stay order dated 6.6.2008 directing the appellant to pay a sum of Rs.10 lakhs out of a total demand of Rs.19,35,603/- and a sum of Rs.10 lakhs towards penalties imposed under various Sections which included Rs.19,35,603/- under section 78. The Commissioner (Appeals) gave 15 days for deposit of the amount. The appellant filed an application dated 30.6.2008 for modification of the said stay order. The appellant in the application for modification of stay had submitted that they had deposited a sum of Rs.two lakhs and wanted waiver of balance of the duty and penalty. The stay modification application as well as appeal have been decided on 2.7.08 again without giving an opportunity of hearing.

3. We are not going into the reasonableness of the amounts ordered to be deposited by the Commissioner (Appeals). However, we are sorry to note that both the stay application and the modification application have been decided in a hurry and without affording any opportunity of hearing. Consequently, the appeal stands dismissed for non-compliance of stay

order. There is a clear violation of principles of Natural justice. On this short ground, we set aside the order of the Commissioner (Appeals) and remand the matter to him to consider the stay application afresh after giving reasonable opportunity of hearing thereafter to decide the appeal as per the law.

4. The appeal is allowed by way of remand. Stay petition also stands disposed of accordingly.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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