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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/601 /2007-602 /2007 - CU[DB] Date 24/11/2008
ST/STAY/2445-46/07

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

To :
SHREE VIBGYOR COLOUR LAB
SHOP NO 204, A MARKET, SECTOR-6, BHILAI, DISTT-DURG(CG)

SHREE VIBGYOR COLOUR LAB Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/344-45/08 **CU[DB]** dated 14.11.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Along with Stay Order No St/455-56/08 (St/455-56/08)

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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)

17. SHREE VIBGYOR COLOUR LAB
    SHOP NO 204, A MARKET, SECTOR-6, BHILAI, DISTT- DURG(CG)

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

COURT-II

Date of hearing/decision: 14.11.2008

Service Tax Appeal Nos. 601 - 602 of 2007
with Service Tax Stay Nos. 2445-2446 of 2007

[Arising out of the order in appeal No. 16 & 17-ST/RPR-II/2007 dated 20.7.2007 passed by the Commissioner of Central Excise (Appeals), Raipur].

M/s Shree Vibgyor Colour Lab. Appellant
[Rep. by Sh. Hemant Bajaj, Advocate]

Vs.

CCE, Raipur Respondent
[Rep. by Sh. Sumit Kumar, DR for the respondent]

Coram: Hon'ble Mr. D.N. Panda, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final Order No. ST/344-345/08
Stay Order No ST/455-456/08

Per D.N. Panda.

Learned Counsel Shri Hemant Bajaj, Advocate appearing for both the appellants submits that a common order dated 20.07.2007 was passed. Learned Commissioner (Appeals) on the date of hearing on 20.07.2007 did not admit the appeal for failure to make pre-deposit. Therefore, the matter should go back to the same authority who will re-consider the matter.

2. Learned DR submits that the order-in-appeal is against no pre-deposit made by the appellants, therefore, the authority below has rightly passed the order.

3. Heard both sides and perused the record. The common order dated 20.07.2007 has proceeded to decide the matter on merit when there was failure to make pre-deposit under section 35F of the Central Excise Act, 1944 read together with the provisions of Finance Act, 1994. We surprise that when there was pre-requisite of the pre-deposit to consider an appeal for no absolute right in statute for appeal and the right is conditional by pre-deposit, how the learned appellate authority below proceeded to decide the matter on merit. This has resulted in total failure of justice prejudicing interest of Revenue.

4. The learned Counsel has submitted that his case now being presently covered by the Tribunal's judgement in M/s Garg Photo Film in service tax Appeal Nos. 86/2006, 333/07, 487/06 & 147/07, the appellant deserves consideration by the lower appellate authority in respect of pre-deposit also which is unwarranted. Therefore, without expressing any opinion, we send the matter back to the lower appellate authority who shall reconsider the pre-deposit issue before him, on the basis of law and affording reasonable opportunity of hearing to the appellant, that Authority shall dispose the matter in accordance with law.

5. In the result, both the stay applications and appeals are disposed.

(Dictated and pronounced in the open Court)

[D.N. Panda]
Judicial Member

[Rakesh Kumar]
Technical Member

[Pant]