

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

Appeal No. ST/13 /2008-SM[BR]ST/ STAY/ 32/2008-SM[BR]

Date 14/02/2008

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

To :
NATIONAL PRODUCTIVITY COUNCIL
SB-96, J.L.N. MARG, BAPU NAGAR, JAIPUR

NATIONAL PRODUCTIVITY COUNCIL

C.C.E. JAIPUR I


Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.296/2008-SM[BR]&S/103/2008-SM dated 11.2.2008 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
2. Adv. / Consult
MR. BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-110070
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

**Service Tax Stay Application No. 32 of 2008 in Service Tax
Appeal No. 13 of 2008 -Single Member Branch**

[Arising out of Order-in-Appeal No. 170(RKS) ST/JPR-I/2007 dated 4.10.2007 passed by the Commissioner (Appeals-I), Customs and Central Excise, Jaipur]

Date of Hearing/Decision: 11.2.2008

Hon'ble Mr. Justice S.N. Jha, President

-
1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982.
 2. Whether it should be released under Rule 27 of the :
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair copy :
of the Order?
 4. Whether Order is to be circulated to the Departmental :
authorities?

National Productivity Council	Appellant
Vs.	
Commissioner of Central Excise, Jaipur-I	Respondent

Appearance:

Mr. Bipin Garg, Advocate for the Appellant

Mr. Sumit Kumar, Authorized Representative(DR) for the Appellant

CORAM: Mr. Justice S.N. Jha, President

Per Justice S.N. Jha:

Stay Order No. 103/08-SM(BR)

Final Order No. 296/08-SM(BR)

This appeal is directed against the order of the Commissioner (Appeals) dismissing the appeal of the appellant for non-compliance of the provisions of Section 35F of the Central Excise Act. Section 35 of the Act mandates pre-deposit of duty and penalty in accordance with the order-in-original of the adjudicating authority.

2. The appellant was directed to pre-deposit a sum of Rs.1,00,000/- in terms of the said provisions vide order dated 1.8.2007. The deposit was to be made by 10.8.2007 and the compliance was to be reported by 17.8.2007. As the circumstances would have it, the appellant deposited the amount but after expiry of time on 17.8.2007. Compliance was reported on 28.8.2007. The Commissioner (Appeals) held that the order dated 1.8.2007 had not been complied with and accordingly dismissed the appeal by the impugned order.

3. On behalf of the Revenue, a preliminary objection was taken to the maintainability of this appeal on the ground that the necessary clearance from the Committee on Disputes(COD) in accordance with the decision of the Supreme Court in **ONGC Vs. CCE**, 1992 (61) ELT 3(SC) as clarified by the order dated 7.1.1994, reported in 1994 (70) ELT 45(SC) has not been obtained and therefore, the appeal is not maintainable.

4. Having heard the learned counsel for the appellant and the learned Departmental Representative on the point I am satisfied that the said decision of the Supreme Court would not stand in the way of the appellant in the peculiar facts of this case. As per the clarificatory order dated 7.1.1994 (supra) the rationale of the decision in **ONGC** case was to minimize the avoidable litigation without affecting the statutory remedies available to the party. This will be clear from the following observation :-

“It is clear that order of this court is not to affect that -nor can that be done-so far as Union of India and its statutory corporations are concerned, the statutory remedies effaced. Indeed, the purpose of the constitution of the High Power Committee was not to take away those remedies.....It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house Committee.....”

5. As far as the instant case is concerned, the Commissioner (A) dismissed the appeal on the ground of non-compliance without going into the merits of the case. The only question for consideration in this appeal is whether he was justified in doing so. As merits of the case have not been looked into by the Commissioner (Appeals), it is clear that this Tribunal would also not like to go into the same. If the Tribunal comes to conclusion that Commissioner (A) was not justified in dismissing the appeal on the ground of non-compliance, it would follow that the matter has to go back for decision on merits. This being the position, I am satisfied that the ratio of the decision of the Supreme Court aforesaid cannot be applied to the present case.

6. Coming to the sequence of events which led to dismissal of the appeal, it is clear that there was, at the worst, delay of only seven days in compliance of the order. I am inclined to think that the order had been substantially complied with. The Commissioner (A) should in all fairness have condoned the delay by extending the period of compliance and treated the order to have been complied with as has been complied within the extended period, and decided the appeal on merits. The impugned order of the Commissioner (Appeals) in the circumstances is fit to be set aside.

7. In this view of the matter, the requirement of pre-deposit of the amount in this appeal is dispensed with and the impugned order is set aside, and the matter is sent back to the Commissioner (A) for decision on merits.

8. The appeal is allowed.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President