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

Appeal No. E/665 /2008,982 /2008-SM[BR] E/STAY /640 /2008-SM[BR] Date 23/05/2008

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

To :
1-2) M/S KHANDELWAL SOYA INDUSTRIES LTD.
V-6, RAMPUR GARDEN,
BAREILLY.

M/S KHANDELWAL SOYA INDUSTRIES LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 819 -820 /2008-SM[BR]&S/ 345 /2008 dated 16.5.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.KAPIL VAISH
   B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI, COURT NO.1

EXCISE STAY APPLICATION NO. 640 OF 2008
AND
EXCISE APPEAL NO. 665 OF 2008
EXCISE APPEAL NO.982 OF 2008

Date of Hearing/Decision: 16.5.2008

[Arising out of order-in-appeall Nos. 231-232/CE/MRT-II/2007 dated 31.10.2007 passed by the Commissioner of Customs & Central Excise(Appeals), Meerut]

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.	:	No
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	:	

M/s. Khandelwal Soya Industries Ltd. Applicant
[Rep. by: Shri K. Vaish, C.A.]

Versus

CCE, Meerut-II Respondent
[Rep.by: Shri B.S. Suhag, Advocate]

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

Stay order No. 345/08-SM(BR)

Final **ORDER** No. 819 to 820/08-SM(BR)

Per Justice S.N.Jha:

The appeals are being disposed of, without insisting on pre-deposit as required under Section 35F of the Central Excise Act.

2. These two appeals by the assessee are directed against common order of the Commissioner (Appeals), Meerut-II disposing of the appeals preferred by the assessee and the Revenue. While the appeal of the assessee was dismissed for non-compliance of the provisions of Section 35F which requires pre-deposit of the duty demand and the penalty, the appeal of the Revenue was allowed in part by way of remand with a direction to the adjudicating authority to pass an appropriate order in respect of penalty.

3. The case of the appellant on merit is that it is engaged in the trading of biscuits. The rate of excise duty on biscuits prior to 1.3.2003 was 16% which was reduced to 8% with effect from 1.3.2003. The appellant was not aware of the change and it continued to charge duty @ 16% for some time in the month of March. Later the appellant was asked to pay the amount collected and dispute arose. The appellant took the stand that it had not collected the duty and, in any view, is not liable to pay the amount in view of the provisions of Section 11D of the Excise Act. Section 11D provides that notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules, every person who is liable to pay duty under this Act or the

rules, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government. According to the appellant, firstly, no amount was realized/collected and therefore, there is no occasion to pay the amount to the Central Government. Secondly, under Section 11D of the Act, a person "liable to pay duty under the Act or the rules" alone can be asked to pay the amount collected in excess, as the appellant is not registered under the Central Excise Act, and, therefore, not liable to excise duty, it cannot be directed to pay the amount to the Central Government. The appellant also pleads limitation.

4. On consideration of the case of the appellant, Commissioner (Appeals) directed it to pre-deposit rupees sixty nine thousand which comes to about 50% of the amount involved, in terms of Section 35F of the Act. It was stated that the appellant tendered the amount but the Bank did not accept the deposit in the absence of the "assessee code". It was stated that as the appellant is not registered under the Central Excise Act, it does not have the required 'assessee code' which any person making deposit is required to mention in the challan as per the procedure called

Electronic Accounting System in Excise and Service Tax(EASIEST).

5. Shri K. Vaish, Chartered Accountant, reiterated the case of the appellant and finally took the stand that if the submissions on merit are not accepted by the Tribunal, the appellant may be allowed to deposit the amount as per the order of the Commissioner (Appeals) but in that case, it was submitted, the deposit may not, again, be accepted for want of 'assessee code'. Hearing of the case was accordingly adjourned yesterday with a direction to the DR to take instructions as to the manner of deposit in the circumstances mentioned above. Today, when the appeals were taken up, learned DR produced copy of the letter C.No.V(30)RC/M-II/02/Letter/2008/6833 dated 14.5.2008 of the Joint Commissioner, Central Excise, Meerut II, the relevant part of which reads as under :-

> "Keeping in view the present situation though there is no direct remedy available in the present rules/procedures, however, it is suggested that the procedure for deposit of Central Excise duties during bank strike, natural calamities etc. as envisages in para 6 of Part V of Chapter 3 of CBEC Excise Manual of Supplementary instructions-2005 may be adopted in this matter, if the Hon'ble Tribunal desire so, in that case the cheque for specified amount will be submitted to the Chief Account Officer by the party through the jurisdictional officers and thereafter such cheque will be deposited by the Chief Account Officer in the designated banks".

6. On behalf of the appellant it was submitted that in case of success before the Commissioner (Appeals) the appellant would be entitled to claim refund of the amount and if the deposit is made as per the procedure mentioned in the aforesaid letter, there may be

difficulty in getting the refund as the appellant may not produce counterfoil of the challan showing deposit. The apprehension of the appellant may be true, for, any payment by cheque as mentioned in the letter must be acknowledged properly by the receiving officer so that the person concerned does not face any difficulty in taking follow-up steps, if so warranted. I accordingly direct that on production of cheque for rupees sixty nine thousand drawn in favour of Chief Accounts Officer, the jurisdictional officer of the Department will grant a proper receipt giving necessary details which may be used for the purpose of refund if such occasion arises in future.

7. Before I part with the case, I may clarify that I have advisedly not dealt with the submissions of the appellant, for expression of any opinion on merit may cause prejudice to one or the other party before the Commissioner (Appeals); I may nevertheless observe that I have not found any prima facie merit in the submission, as referred to above, to justify complete waiver of the amount by the Commissioner (Appeals).

8. In the circumstances above, as there is no decision on merit by the Commissioner (Appeals), the impugned order 31.10.2007 is set aside with direction to decide the appeal on merit, on submission of the proof of deposit of the amount of rupees sixty nine thousand on or before 2.7.2008.

9. The appeals stand disposed of accordingly.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

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