TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/91 /2009 - CU[DB]
ST/S/285/09

Date 04/05/2009

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

To :
M/S INDIAN ACRYLICS LTD.
VILL. HARKISHANPURA, DISTT. SANGRUR.

M/S INDIAN ACRYLICS LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/133 2009 CU[DB]** dated 20.04.09 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/129/09

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.VIKRANT KACKRIA
509, SEC-7,PANCHKULA, HARYANA
3 S.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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Stay No. 285 of 2009-Cust. Br. and Service Tax Appeal No. 91 of 2009

(Arising out of Order-in-Appeal No. 358/CE/Ldh/2008 dated 31.10.08 passed by the Commissioner (Appeals), Central Excise & Service Tax, Chandigarh)

Indian Acrylics Ltd. Appellant

Vs.

CCE, Ludhiana Respondent

Appeared for Appellant : Shri Hemant Bajaj, Advocate

Appeared for Respondent: Shri Vijai Kumar, SDR

Date of Hearing: 20.4.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. 57/133/09 dated............
Stay Order No 57/129/09

Per D.N. Panda :

Ld. Counsel Shri Hemant Bajaj submits that this Appellant has been thrown at the threshold by the ld. Commissioner (Appeals) when pre-deposit could not be made by the Appellant. The Appellant being aggrieved by the stay order passed on 18.9.08 filed a modification application. That was also rejected on the ground that the stay application was not showing new grounds. He submits that the demand relates to the period from 26.2.05 to 31.3.07. Service Tax of Rs.10,49,799/- was demanded in adjudication holding that the Appellant was not entitled to pay Service Tax through Cenvat Account. He submits that such a modality is permissible in terms of the Tribunal's order in the case of **Bhushan Power & Steel Ltd. Vs. CCE** reported in 2008 (10) STR 18 and **CCE Vs. Nahar Industrial Enterprises Ltd.** reported in 2007 (7) STR 26.

2. Ld. DR submits that the Appellant is not entitled to discharge tax liability through Cenvat Account.

3. Ld. Commissioner (Appeals) has not decided the issue on merit. He appreciated the law that right of appeal is conditional and failure to make pre-deposit deprives an Appellant from decision on appeal. we do appreciate that right of appeal is conditional. But prima facie appreciation of the case is essential when an appeal undergoes redressal in two stages. The first stage is stay hearing and second stage is the appeal hearing. This we say, following the ratio laid down by Apex Court's judgment in the case of **Alex Enterprises Vs. Union of India** reported in 2009 (236) ELT 10 (SC). The Appellate Authority below did not appreciate case of the Appellant when decisions cited by the ld. Counsel today, were available before him for an advantageous reading. We do not

propose the Appellant to suffer when they have a cause and citation of the aforesaid case call for consideration. A good cause cannot be turned down if the Appellant has cause.

5. In view of our observations aforesaid. We direct the Appellant to appear before the ld. Commissioner (Appeals) on **5.5.2009** and file an application for hearing of the stay application afresh in the light of aforesaid two decisions cited today. If the appellant appears before ld. Commissioner (Appeals) he shall hear or fix a date of hearing for which the Appellant shall take notice. The matter calls for hearing afresh taking all legal points involved in the matter and law applicable. Upon hearing the Appellant, the ld. Commissioner (Appeals) shall pass appropriate order on the stay application. We do not restrict powers of ld. Commissioner (Appeals) by any means. He is at liberty to dispense with pre-deposit if he considers proper.

6. With the aforesaid observations, we dismiss the stay application as well as the appeal before us.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM