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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/562 & 565/2007 - CU[DB] Date 15/05/2009

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

To :
M/S PNEUMATIC POWER TOOLS & CO.
68 B,A.P.C.ROAD, KOLKATA-700009

M/S PNEUMATIC POWER TOOLS & CO. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/163-164 2009 CU[DB]** dated 08.05.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

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. Pravir Chawdhury, Adv
   C/O Appellant
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 Appeal No. 562 & 565 of 2007-Cust. Br.**

(Arising out of Order-in-Appeal No. 13-ST/RPR-II/2007 dated 28.6.2007 passed by the Commissioner (Appeals), Central Excise, Raipur)

M/s Pneumatic Power Tools & Co. — Appellant

Vs.

CCE, Raipur — Respondent

**Appearance**

Appeared for Appellant : Shri Pravir Chawdhury, Advocate

Appeared for Respondent: Shri L.B. Yadav, DR

**Date of Hearing: 8.5.2009**

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

Final Order No. 57/163-164/09 dated............

Per D.N. Panda :

Ld. Counsel Shri Pravir Chawdhury without filing a Vakalat has appeared today and submits that the Appellant has approached the Hon'ble Supreme Court by way of Civil Appeal against the order dated 17.3.2009 passed by the Tribunal. The Civil Appeal is stated to have been filed on 6.5.09 in terms of Diary No. 14307/09.

He prays that time may be allowed till the matter is taken up by Hon'ble Supreme Court.

2.1 Ld. DR appearing for Revenue submits that he has been appearing in this matter for seven times. He submits that the Appellant came before this forum against two orders. When the order in appeal dated 28.6.07 gave rise to Service Tax demand of Rs.8,62,924/- and the order in appeal dt 17/7/07 resulted with demand of Rs.4,66,953/- ~~by order dated 17.7.07~~, the Appellant came before this forum. Aggregate demand of Service Tax came to Rs.13,29,877/-. Both the Appeals are registered as Appeal Case No. 565/07 and 562/07 respectively. In respect of these two demands, the appellant came before the Tribunal in Stay applications No. 2352 & 2358/07. Both the applications are disposed by a common order dated 28.1.08. That order directed the appellant to make pre-deposit of 50% of the total demand within a period of eight weeks.

2.2 Being aggrieved by stay order dated 28.1.08, the appellant moved application for modification of such order. That matter was listed on 2.4.08 vide Misc. Application Nos. 297 and 298 of 2008. The Bench directed for listing of the matter before the Bench presided by Judicial Member who was party to the order dated 28.1.09. That Bench heard the matter on 11.4.08. It was noticed by that Bench that there was no change of circumstances after passing of the stay order dated 28.1.08. Therefore application was considered to be devoid of merit for which that was rejected.

However to serve the interest of justice, three weeks more time was allowed to comply with the condition of stay order. Accordingly, the matter was directed to be fixed on 7th May 2008.

2.3 In accordance with order dated 11.4.08, the matter came before the Bench on 19.5.08. The Bench on that day noted that the Appellant has gone to Hon'ble High Court of Delhi against the order dated 11.4.08 challenging the pre-deposit in writ petition (Civil) No. 3673/08. Accordingly, the matter was directed to be listed on 7.8.2008. On 7.8.2008, the Bench noted that the Appellant withdrew its writ petition for which that was dismissed by Hon'ble High Court. The Hon'ble High Court vide order dated 10.7.2008 in Civil writ petition No. 3673/08 granted eight weeks time to make the pre-deposit in terms of the order of the Tribunal. Accordingly, it was directed to fix the matter on 15.9.08 for reporting compliance.

2.4 When the matter came before the Bench on 15.9.08, the ld. Counsel placed a certified copy of the order dated 9.9.08 passed by the Hon'ble Delhi High Court in Civil Misc. petition No. 12599/08 (arose out of writ petition No. 3673/08) showing grant of further six weeks time to make pre-deposit. Following the direction of the Hon'ble High Court, the matter was adjourned to 17.11.08 for compliance. Thereafter, the appellant came before this Tribunal by way of Misc. application No. 939-940/08 praying for modification of order dated 28.1.08 passed by the Tribunal whereby pre-deposit of 50% of the total demand was directed. When these Misc.

applications were listed for hearing on 17.3.09, ld. Counsel appearing for the appellant submitted that in order to pursue the matter before the appropriate forum, the appellant craves leave to withdraw its applications. Tribunal allowed the prayer and disposed the Misc. applications 939 and 940 of 2008 accordingly.

2.5 In view of the matter as aforesaid, Ld. DR prays for dismissal of the appeals since the adjudication was completed long long ago and the appellant could not succeed before the first Appellate Authority two years back. Added to this, the Appellant has abused the process of law in the aforesaid manner following dilatory tactics without complying to order of Hon'ble High Court and Tribunal. This has caused prejudice to the interest of Revenue. Therefore he prays that both the appeals be dismissed.

3. Heard both the sides and perused the record.

4. We have checked up the factual submissions made by Revenue and noticed that to be correct. This factual aspect is also not contradicted by ld. Counsel appearing today. We are satisfied that Revenue's interest has been prejudiced following aforesaid dilatory tactics and abusing process of law. However ld. counsel having filed a copy of Civil appeal filed before Apex Court, we make it clear that we shall be guided by Hon'ble Supreme Court, if any order that shall be passed against such application. We also make it clear that we shall carry out the direction of the Hon'ble Supreme

Court, if any, that may be passed in the Civil Appeal stated to have been filed by the litigant today.

5. Noticing that Revenue has been prejudiced and also following the ratio laid down by Hon'ble Supreme Court in the case of **Dunlop India Ltd.** - 1985 (19) ELT 22 (SC) and **Benara Valves Ltd. Vs. CCE** reported in 2006 (204) ELT 513 (SC), we are unable to appreciate undue hardship of the appellant. Rather the case demonstrates to be of dilatory tactics on the part of the Appellant to cause prejudice to Revenue. Therefore we have no option but to dismiss the appeal of the Appellant today in absence of any order from the Apex Court or stay of the order passed by this Tribunal on 17.3.09. We once again make it clear that our dismissal of appeals shall be subject result of civil appeal filed by the Appellant before the Hon'ble Supreme Court as averred today.

6. Ld. Counsel not having filed vakalat today, we direct him to file a memo of appearance in support of his appearance today and also Vakalat duly executed by his client with no objection if that is required from the learned Counsel who appeared in the previous occasions. We have noticed that ld. Counsel Shri N.K. Choudhary appeared on 28.1.08. Ld. Counsel Shri Hargun Jaggi appeared on 2.4.08, ld. Counsel Shri Hargun Jaggi and Shri C.N. Kali appeared on 11.4.08. Ld. Counsel Shri A.K. Panikar appeared on 19.5.08. Ld. Counsel Shri A.K. Panaigrahi appeared on 7.8.08. Similarly on 15.9.08 ld. Counsel Shri A.K. Panaigrahi also appeared. Ld. Counsel Shri Raja Chatterjee appeared on 17.3.09. We direct ld. Counsel

Shri Chowdhury to explain by way of a memo whether all the learned Counsels were signatory to vakalatnama and also whether he was signatory to the vakalatnama. Registry is directed to place a report to the Bench getting compliance by way of memo from Shri Chaowdhury appearing today, on this point.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM