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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/2420/2008-2421/2008,2482/2008-2485/2008 – SM[BR] Date 05/02/2009
E/STAY/2421-2422, 2481-2483& 2485/2008-SM[BR]

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

To :
M/S HINDUSTAN POLYESTER LINES,

54-62, HUDA INDUSTRIAL AREA, REWARI
(HARYANA)

M/S HINDUSTAN POLYESTER LINES, Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No**.120- 125 /2009-SM[BR]&S/16-21/2009 dated 2.2.2009

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. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR.C.HARISHANKAR
46, BANK ENCLAVE,DELHI-110092

[2] SHRI K.K.ANAND ADV.
A-5,[BASMENT] 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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

2. M/S BABA DEVPURI ROAD CARRIERS
PARKING NO 3, NEAR VIMAL HOTEL, TRANSPORT NAGAR,
GWALIOR.

3. SH K.S.BHAWAN, MANAGER(EXCISE)
M/S FCL TECHNOLOGIES & PRODUCT LTD(NOW UFLEX LTD)
PLOT NO L-1, GHIRONGI , MALANPUR INDUSTRIAL ARA, BHIND (M.P)

4. SH H.M.RAJE, SR GENERAL MANAGER
M/S FCL TECHNOLOGIES & PRODUCT LTD(NOW U FLEX LTD)
PLOT NO L-1,GHIRONGI, MALANPUR INDUSTRIAL AREA, BHIND (M.P)

5. SH TAPESHWAR SINGH
PROP BDRC PARKING NO 3, NEAR VIMAL HOTEL,
TRANSPORT NAGAR, GWALIOR

6. SHRI MOHD. AMIN GENERAL OF
M/S HINDUSTAN POLYSTERS LINES, 54-62, HUDA
INDUSTRIAL AREA, REWARI (HARYANA)

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

E/Stay Appln **Nos. 2421-22, 2481 -83 & 2485 of 2008 with Excise Application Nos. 2420 – 21, 2482-85 of 2008-SM**

[Arising out of order-in-appeal No. 190 - 195/ANS/GGN/2008 dated 29.8.2008 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon]

Date of Hearing/Decision : 02.02.2009

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice-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?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Hindustan Polyester Lines & Others — Appellant
[Rep. by Mr. Hemant Bajaj & Mr. S. Sunil, Advocates]

Versus

CCE, Delhi-III — Respondent
[Rep. by Mr. R.K. Saini, DR]

CORAM: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Stay order No. 16-21/09-SM(BR)
Final **Order** No. 120-125/09-SM(BR)

Per Jyoti Balasundaram:

For reasons recorded below I waived pre-deposit of penalties imposed upon the appellants herein and proceeded to hear and decide the appeals themselves at this stage, as the grievance of M/s Baba Devpuri Road Carrier, transporters, is of contravention of the principles of natural justice.

2. In this case, penalties of Rs. 2 lacs have been imposed upon M/s Hindustan Polyester Lines on the ground that there was an excess stock both of inputs (polyester chips) and final products (polyester yarn) detected in the factory on the visit of the officers on 27.12.2001. Penalty of Rs. 1 lac imposed upon the Partner and penalties of Rs. 50,000/- have been imposed on the transporter and the Prop. of the transporter, and Rs. 50,000/- on two employees of M/s FCL Technologies and Products Ltd., for having involved ~~considered~~ themselves in the supply of polyester chips without valid documents to M/s Hindustan Polyester Lines.

3. The grievance of the transporters, its Prop. and the employees of M/s FCL Technologies and Products Ltd., is that of violation of principles of natural justice inasmuch as notice of personal hearing fixed on 27.12/28.12/31.12.2007 which was sent by speed post /registered post on 26.12.2007 reaches them only on 01.01.2008 i.e. after the last date for hearing and adjudication order is also dated 31.12.2007. When this grievance was raised before the Commissioner (Appeals), he has held as under:-

> "The appellants have also contended that the impugned order should be set aside for non-compliance of the principles of natural justice by the adjudicating authority. But I find that the adjudicating authority has considered the submissions made by them at the time of personal hearing held before the Deputy Commissioner. It has been observed that all these appellants at the time of personal hearing, held at appeal stage have attended through their learned Advocate wherein he only reiterated the submissions contained in their appeals. In the earlier adjudication proceedings also there was mere reiteration, at the time of personal hearing of the submissions as contained in their appeals. Thus, I find that the appellants have not produced any evidence that their non appearance before the adjudicating authority has caused any prejudice to them".

4. This clearly shows that there has been contravention of principles of natural justice as no opportunity of being heard was extended to the transporters and their Prop. and the two employees of M/s FCL Technologies & Products Limited. For this reason, the impugned order is set aside and the appeals are allowed by way of remand to the adjudicating authority for fresh decision in accordance with law, after extending the reasonable opportunity to appellants of being heard in their defence.

5. The appeals are thus allowed by way of remand.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]