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

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1386/2011 – SM[BR] E / STAY / 1779 / 2011-SM[BR] **Date 25/11/2011**

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

To :
M/S J.B.MANGHARAM FOODS PVT LTD
GOLA KA MADIR,P.O RESIDENCY, GWALIOR(MP)

M/S J.B.MANGHARAM FOODS PVT LTD Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 792/2011-SM[BR]&S/770/2011** dated 3.10.2011 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.R. KRISHNAN
297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, NEW DELHI

COURT No. II

Stay Application No.1779 of 2011
Excise Appeal No.1386 of 2011(SM)

Date of Hearing / Decision : 3.10.2011.

M/s J.B.Mangharam Foods P.Ltd. — Appellant
Versus
CCE, Indore — Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Present for the Appellant - Shri R.Krishnan, Adv.
Present for Respondent - Shri Fateh Singh, DR

Final **Order No.** 792/2011 SM (BR) & **Dated :**

Per D.N. Panda: S-770/2011 SM (BR)

Ld. Counsel submits that obligation arose under statutory enactment to ensure welfare of employees engaged in manufacture. The expression in relation to manufacture if relates to ancillary incidental activity, that contributes to main activity of manufacture. The audit finding itself clearly took into consideration the liability relating to insurance arose under statutory enactment. Therefore, such a liability when discharged paying Service Tax, that shall be entitled to Cenvat credit and pre-deposit be waived and appeal allowed. But ld. DR opposed arguing for pre-deposit.

2. When the proposition is as above, the amount involved in this case is found to be Rs.23,258/- and levy of penalty is found

to be Rs.2,000/- Therefore, it was considered to dismiss the appeal on pecuniary jurisdiction. But when matter in controversy was looked into, that suggested intervention in view of importance of the issue involved. Accordingly, jurisdiction conferred by law was thoroughly looked into. It is ascertained that it is not desirable in the interest of justice to dismiss the appeal on pecuniary ground since dismissal on the ground of monetary limit is not permitted by Finance Act, 1994, in absence of provision in section 86 of Finance Act, 1944 as that is appearing in second proviso to 35B of Central Excise Act, 1944 dealing with Central Excise appeals in respect of dispute of demand not exceeding Rs.50,000/-, conferring discretion on Tribunal for not entertaining such appeals. This appeal is accordingly entertainable although service tax demand of Rs.23,258/- and penalty of Rs.2,000/- is involved. Therefore, waiving requirement of pre-deposit with consent of both sides, appeal was taken up for disposal.

3. When the merits of appeal was looked into, it was found that there was no dispute while reading para 2 of the Show Cause Notice that liability of appellant arose under statutory obligation as has been recorded by the notice issuing authority as well as Audit Party.

4. Service Tax was paid to avail service arising under statutory enactment. The appellant had not availed such service at its will and pleasure. Therefore, it should not be denied benefit of

Cenvat Credit of service tax paid on such service since the very liability is outcome of implementation of statutory enactment. Accordingly, it can be said that the expression "in relation to manufacture" extends to statutory liability that arises for ensuring welfare of workforce through insurance and mediclaims under labour welfare enacements.

5. When the legal position appears to be as above, waiving pre-deposit, appeal is allowed setting aside the impugned order.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I