

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

Date 05/01/2010

No. E/2913/2009 - SM [BR] E / STAY / 3013 / 2009 -SM[BR]

At Registrar
A.T, New Delhi

To :
M/S GODREJ HERSHEY LIMITED
PLOT NO 5, NEW INDUSTRIAL AREA NO 1,
MANDIDEEP.
462046

M/S GODREJ HERSHEY LIMITED

Appellant

Vs
Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of Final order No.1 / 2010 -SM[BR]& S/ 6 / 2010 dated 31.12.2009
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 BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI

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 Publications 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 Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

16 Office Copy

17 Guard file

Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II**

E/Stay 3013/09, E/Appeal No.2913/2009-SM(Br)

(Arising out of order in appeal No.291/BPL/2009 dated 30.7.2009
passed by the Commissioner of Central Excise (Appeals), Bhopal)

M/s Godrej Hershey Limited

Appellant

Vs

CCE, Bhopal

Respondent

Appeared for Appellant : Shri Ravi Raghavan, Advocate
Appeared for Respondent : Shri S.K. Bhaskar, DR

Date of Hearing: 14.12.09

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

final Order No. *01/2010 SM(Br) 12009*
Per D.N. Panda: *S-06/2010 SM(Br)*

Although this matter is fixed for stay hearing today, submission of the appellant is that the order passed by the learned Commissioner (Appeals) shall not be operative till disposal of the appeal and the issue involved not being strange or complicated, mere disposal of stay application keeping the appeal pending shall prejudice interest of appellant. He prays for disposal of the appeal also. Precisely grievance of the appellant is that inadvertently excess amount of duty was paid for which refund of Rs.2,45,286/- arose. That claim was also allowed by the learned adjudicating authority. But denial was made by the first appellate authority

relying on the show cause notice dated 13.5.08 issued by learned Commissioner of Central Excise of Bhopal on the ground that there was default and short payment of duty for excess clearance made during the material period to which the refund in question pertains and such excess clearances was effected without cover of proper invoice and without maintaining proper record. The matter in dispute therefore, calls for verification of record and to ensure that appellate direction in terms of order dated 30.7.09 is followed.

2. Both sides agree for remanding the matter to the learned adjudicating authority who shall take care of the present refund on the basis of outcome of adjudication proposed by show cause notice dated 13.5.08.

3. In the result, stay application is disposed and the matter is remanded.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*