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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/1455/2010 – SM[BR]& E/ STAY /1496 /2010-SM[BR] Date 24/09/2010

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

To :
M/S. HARYANA EXPLOSIVES PRIVATE LIMITED
VILLAGE-MOHNA, TEHSIL BALLABGARH, DISTT. FARIDABAD.

M/S. HARYANA EXPLOSIVES PRIVATE LIMITED Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1039/2010-SM[BR]&S/460/2010 dated 13.9.2010 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 IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.N.K. SHARMA & ASSOCIATES,
   131-NH-V, RAILWAY ROAD, NIT, FARIDABAD-121001.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Stay No.1496/10, E/Appeal No.1455/10-SM

(Arising out of order in appeal No.29/CE/Appl/DLH.IV/2010 dated 30.3.2010 passed by the Commissioner of Central Excise (Appeals), Faridabad)

Date of Hearing: 13.9.2010

For approval and signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see Under Rule 27 of the CESTAT (Procedure) Rules, 1982? Yes
2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not? Yes
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

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M/s Haryana Explosives & Chemicals (P) Ltd — Appellants

Vs

CCE, Delhi-IV — Respondent

Appeared for the Appellant: Shri N.K.Sharma, Advocate
Appeared for the Respondent: Shri Anil Khanna, SDR

Coram: **Hon'ble Shri M. Veeraiyan, Member (Technical)**

Final ORDER 1039/2010 SM (BR) & S-460/2010 SM (BR)

Per M. Veeraiyan:

Heard both sides on the stay petition. Considering the nature of dispute, pre-deposit is waived and the appeal itself is taken up for final hearing.

2. The Propritorship firm named M/s Haryana Explosives & Chemicals (M/s HEC for short) is engaged in the manufacture of Electronic Detonators on job work basis for M/s IDL, Hyderabad. There was an investigation against M/s HEC. A show cause notice was issued on 12.2.2002 which was adjudicated by the original authority vide order dated 9.4.2007 confirming demand of Rs.2,74,710/- against M/s Haryana Explosives Pvt Ltd; ordering further recovery of Rs.28,049/- on account of irregular availment of modvat credit; a penalty of Rs.3,02,759/- was imposed under Section 11AC and a penalty of Rs. 2 lakhs under Rule 173-Q and Rule 226 of the erstwhile Central Excise Rules was also imposed. There was also penalty on M/s Doaba Enterprises. A letter dated 26.3.2008 was issued by the Superintendent, Range XVII, directing M/s Haryana Explosives Ltd to deposit duty of Rs. 2,02,759/- alongwith interest and penalty of Rs.6,02,759/-. A series of correspondence between the appellant and the department were exchanged and the Assistant Commissioner furnished on 18.9.09 copy of order in original dated 30.03.2007. Thereupon the present appellant filed appeal against the order of the original authority before the Commissioner (Appeals) on 9.11.09. Commissioner (Appeals) vide impugned order, rejected the appeal of the appellants on the ground that the appeal against order dated 30.03.2007 has been filed only on 9.11.2009 much beyond the period of limitation.

3. Learned Advocate submits that the Proprietorship concern was taken over by the appellants from Shri Ganesh Chand Mathur vide agreement dated 6.6.2005. The said Ganesh Chand Mathur became

Director of Haryana Explosives & Chemicals Pvt Ltd and relinquished the directorship. The agreement of taking over the business of erstwhile M/s HEC envisage that the dues if any, for the period prior to take over shall be born by M/s HEC. He submits that the action of the department in seeking to enforce the demand on the appellants was not justified as the liability of the proprietorship concern cannot be fastened on the private limited company. At any rate, they came to know about the order of the original authority relating to M/s HEC only after they obtained the same from the department in September, 2009 and therefore, the appeal filed by them is within time. He submits that they are not liable to pay any dues as per the order in original dated 30.3.07. He fairly concedes that he has nothing to say on the merits of the case in so far as the same relates to demand of duty or imposition of penalties on the proprietorship concern by the order dated 30.3.07.

4. The learned SDR submits that if the appellant choose to file appeal against the order of the original authority, the same should have been filed within the time limit prescribed for the same.

5. I have carefully considered the submissions from both sides. It is not in dispute that order of the original authority dated 30.3.2007 relates to Haryana Explosives and Chemicals and Doaba Enterprises. It is also not in dispute that the Haryana Explosives and Chemicals is a proprietorship concern of Shri Ganesh Chand Mathur. The department should serve the order in original only on M/s HEC and not on Haryana Explosives and Chemicals Pvt Ltd. The present appellant having distanced themselves from the erstwhile proprietorship

concern, filing of appeal against the order demanding duty and imposing penalty against M/s HEC is not well conceived. They are admittedly not concerned on the merits of the case dealt with by the original authority vide order dated 30.3.07. Under these circumstances, they have no jurisdiction to challenge the said order, and therefore, the delay in filing appeal before the Commissioner (Appeals) is an academic issue and is not relevant. The rejection of the appeal by the Commissioner (Appeals) is to be justified though on a different ground.

6. It appears that Proprietor of the erstwhile Haryana Explosives and Chemicals has not filed any appeal against the order of the original authority before Commissioner (Appeals). The department should serve the order to concerned person if advised and take action for recovery of the dues as per the impugned orders as provided under the law.

7. As the appeal filed by the present appellant before the Commissioner (Appeals) challenging the order of the original authority is not well conceived, the said appeal has to be treated as infructuous. The present appeal is also consequently held as infructuous.

8. The appeal is accordingly rejected. The stay application is also disposed of.

(M. VEERAIYAN)
Technical Member

MPS*