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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1762/2009 - EX[DB] WITH ES/1817/2009-EX

Date 02/02/2010

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

To :
M/S J.S.KHALSA STEELS PVT. LTD.
VILL. KUMBH, AMLOH ROAD, MANDI GOBINDGARH.
DISTT. FATEHGARH SAHIB (PB)

M/S J.S.KHALSA STEELS PVT. LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

STAY ORDER NO52/2010-EX

I am directed to transmit herewith a certified copy of **Final order No.** 28/ **2010 EX[DB]** dated 29-1-2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, CHANDIGARH.

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
18.HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 29.01.2010

Excise Stay application No. 1817 of 2009 in
Excise Appeal No. 1762 of 2009

M/s J. S. Khalsa Steels (P) Limited — Appellant
[Rep. by Sh. Vikrant Kackria, Advocate]

Vs.

CCE, Chandigarh — Respondent
[Rep. by Sh. R.K. Verma, DR]

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY Oral order No. 52/2010 - Ex.

Per: Shri Justice R.M.S. Khandeparkar:

Heard. Considering the facts disclosed from the record the application is allowed and the registry is directed to place the Excise appeal No. 1762/2009 for final disposal forthwith. Application stands disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 29.01.2010

Excise Appeal No. 1762 of 2009
[Arising out of order-in-appeal No. 181-191/CE/Chd-I/2009 dated 17.4.2009 passed by the Commissioner, Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per 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?	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 J.S Khalsa Steels (P) Limited — Appellant
[Rep. by Sh. Vikrant Kackria, Advocate]

Vs.

CCE, Chandigarh — Respondent
[Rep. by Sh. R.K. Verma, DR]

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral order No. 28/2010-EX.

Per: Shri Justice R.M.S. Khandeparkar:

The appeal is taken up for final hearing in terms of stay order passed today in stay application No. 1817/2009 after hearing the learned Advocate for the appellants and learned DR for the respondent.

2. The only point which is sought to be raised in the matter is that the Commissioner (Appeals) erred in dismissing the appeal in default under Section 35F of the Central Excise Act, 1944 in spite of the fact that the amount ordered to be deposited in terms of order passed in stay application was already deposited.

3. Perusal of the records apparently reveal that under order dated 27.02.2009, the appellants were directed to deposit a sum of Rs. 1,23,462/- within ten days as pre-deposit in terms of Section 35F of the said Act. The appellants did deposit the said amount on 05.03.2009. However, a communication in that regard, instead of being addressed to the office of the Commissioner (Appeals), was addressed to Superintendent, Central Excise, Range-II, Mandi Gobindgarh. It appears that the same was not received in time by the Commissioner (Appeals) and accordingly on the ground of non compliance of the requirement of Section 35F read with the order dated 27.02.2009 passed by the Commissioner (Appeals), the appeal was dismissed for non deposit of the required amount.

4. The fact that the appellant had, in fact, deposited the amount in terms of the stay application being not in dispute, the impugned order is liable to be set aside and matter remanded to the Commissioner (Appeals) to decide the same afresh in accordance with law. The impugned order is, therefore, set aside and matter is remanded to the Commissioner (Appeals) with a direction to dispose of the appeal filed by the appellants on merits in accordance with provisions of law. Appeal stands disposed of accordingly.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/