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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/3717/2005 - EX[DB
E/S/2700/2005 & E/ROA/195/2009-EX

Date 17/02/2010

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

To :
I.B.P.COMPANY LTD.
T. O.P. BAHOLI, PANIPAT- 132140 (HARYANA)

I.B.P.COMPANY LTD. Appellant

Vs

C.C.E. ROHTAK STAY ORDER NO.105/2010 & MISC ORDER NO.115/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 61/ 2010 EX[DB]** dated 12-2-2010 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. ROHTAK
   SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
   MR.L.P. ASTHANA & MS REENA KHAIR
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
3. C.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

COURT-I

Date of hearing/decision: 12.2.2010

Restoration Application No.195 of 2009 in Central Excise Appeal No.3717 of 2005

Arising out of the Final Order No.453/06-Ex., dated 22.5.06 passed by the CESTAT, New Delhi.

M/s I.B.P. Company Ltd. ... Appellant/applicant

Vs.

C.C.E., Rohtak .... Respondent

Appearance:

Mrs. Reena Khair, Advocate for the appellant/applicant
Shri Nitin Anand, Authorized Departmental Representative (DR) for the Revenue

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

Misc Oral Order No. 115/2010-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the applicant and the learned DR for the respondent. By the present application, the applicant is seeking restoration of the Appeal No.E/3717/2005 which was dismissed on 22.5.2006 along with stay application No.2700/2005 filed therein. The dismissal was on account of want of clearance from the Committee on Disputes appointed by the Government of India. It is well settled that on the said ground the appeals could not be dismissed and therefore, the applicants are justified in seeking restoration of the appeal pursuant to the receipt of such clearance from such Committee. It is undisputed that the Committee already granted clearance for filing appeal. In the circumstances, therefore, the Final Order No.453/06-Ex. in Appeal No.E/3717/05 and Stay Order No.537/06-Ex., dated 22.5.2006 in Stay Application No.2700/2005 are hereby recalled and the said appeal and stay application are restored to the Board and direct the registry to place them for final disposal forthwith. The application stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 12.2.2010

Stay Application No.2700 of 2005 and
Central Excise Appeal No.3717 of 2005

Arising out of the order in original No.11/COMMR/RP/2005 dated 23.9.2005 passed by the Commissioner of Central Excise, Rohtak.

For Approval and Signature:

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

1	Whether Press Reporter 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 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~~/No

M/s I.B.P. Company Ltd. ... Appellant/applicant

Vs.

C.C.E., Rohtak .... Respondent

Appearance:

Mrs. Reena Khair, Advocate for the appellant/applicant
Shri Nitin Anand, Authorized Departmental Representative (DR) for the Revenue

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

STAY Oral Order No. 105/2010-EX
Final Order No. 61/2010-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellant and the learned DR for the respondent.

2. The only issue which arises for consideration in the matter is whether the authorities below were justified in denying the benefit of exemption to the appellant during the period from 1st July 2004 to 3rd August, 2004.

Though it cannot be disputed that at a time when the impugned order was passed, there was no exemption available for the said period, it is undisputed fact that subsequent to the disposal of the said matter by the authorities below, the Government by Notification No.25/2006-C.E. (N.T.) dated 20-Nov-2006 has specifically granted exemption for the said period which is as under:

> ***"Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby directs that the whole of the duties of excise payable under the aforesaid Acts, on such 5% ethanol blended petrol but for the said practice, shall not be required to be paid in respect of such 5% ethanol blended petrol on which said duties of excise were not being levied during the period aforesaid, in accordance with the said practice only if the appropriate duties of excise have been paid on 95% Motor spirit (commonly known as petrol) and 5% ethanol used for blending to obtain such 5% ethanol blended petrol.***
>
> ***Explanation : For the purposes of this exemption "appropriate duties of excise" shall mean the duties of excise leviable under the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the additional duty of excise leviable under section 111 of the Finance (No. 2) Act, 1998 (21 of 1998), and the special additional excise duty leviable under section 147 of the Finance Act, 2002 (20 of 2002), read with any relevant exemption notification for the time being in force."***

3. Being so, the appellants are justified in contending that they are entitled for the benefit of exemption claimed by them in relation to the product.

4. For the reasons stated above, therefore, no purpose will be served in merely granting stay and keeping the appeal pending for further hearing after some period. Learned Advocate for the appellant is justified in placing reliance in the decision in the matter of Indian Oil Corporation Ltd. vs. C.C.E., Pune II reported in 2008 (222) ELT 222 (Tri-Mumbai) and in the matter of IOC Ltd. vs. C.C.E., Guntur reported in 2008 (228) ELT 210 (Tri-Bang.) in support of the appellant's case. In the circumstances, the appeal

and the application are allowed when the impugned order is set aside and the demand thereunder is quashed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

scd/