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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/1860,1867-1873, 1862,1863-1866/2008 - EX[DB] Date 22/02/2010

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE Appellant
Vs
M/S SPENTEX INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 77-89/ **2010 EX[DB]** dated 11-2-2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S SPENTEX INDUSTRIES LTD.
PLOT NO.51-A, INDUSTRIAL AREA,SECTOR-III, PITHAMPUR (MP)
2. Adv. / Consult SH. RUPINDER SINGH, C/O
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
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)

19. M/S . RITSPIN SYNTHETICS LTD.
PLOT NO. 2,KHEDA INDUSTRIAL
GROWTH CENTRE,SECTOR-III,
PITHAMPUR(MP)

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

Date of hearing: 11.02.2010
Date of decision: 11.02.2010

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

Excise Appeal No. 1860 of 2008

[Arising out of Order-in-Appeal No. IND-I/ 54 & 55//2008 dated 22.02.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

CCE, Indore — Appellants

Vs.

M/s Spentex Industries Limited — Respondent

AND

Excise Appeal No. 1867, & 1868 to 1873 of 2008

[Arising out of Order-in-Appeal No. IND-I/ 34 to 40//2008 dated 14.02.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

CCE, Indore — Appellants

Vs.

M/s Spentex Industries Limited — Respondent

AND

Excise Appeal Nos. 1862, 1863 to 1866 of 2008

[Arising out of Order-in-Appeal No. IND-I/ 41 to 45//2008 dated 18.02.2008 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore]

CCE, Indore Appellants

Vs.

M/s Ritspin Synthetics Limited Respondent

Rep. by Sh. R.K. Verma, JDR for the appellants.
Rep. by Shri Rupinder Singh, Advocate for the respondents.

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

Final **Oral Order** No. 77 to 89/2010-EX

Per Shri Justice R.M.S. Khandeparkar:

Since common questions of law and facts arise in all these matters, they were heard together and are being disposed of by this common order.

2. Aggrieved by the order passed by the Commissioner (Appeals) directing the refund of the amount sanctioned as rebate ignoring the department's claim confirmed by the order passed by the adjudicating authority, the Revenue is in appeal in all these proceedings. On the other hand, the impugned order is sought to be justified by referring to the order passed by the Madhya Pradesh High Court staying the effect of the order passed by the Central Government in revisional authority whereby order relating to the rebate claim of the respondents was sought to be rejected.

3. Learned DR while challenging the impugned order submitted that the order in relation to the appropriation of the amount due to the Department against the rebate sanctioned in favour of the assessee was done prior to the disposal of the appeals filed by the assessee against the order confirming the demand passed by the adjudicating authority and when there was no stay in operation to the order of the adjudicating authority. He further submitted that the order of the Hon'ble High Court was in relation to the order passed by the Central Government in revisional jurisdiction on 15.05.2007 which related to a different rebate claim proceedings and not to the rebate proceedings in hand. Being so, according to the learned DR, the Commissioner (Appeals) erred in allowing the appeal filed by the respondents against the order of appropriation without even going into the merits of the case and ignoring the fact that the issue regarding the claim of rebate was not before the Commissioner (Appeals) for his adjudication.

4. On the other hand, learned Advocate for the respondents placing reliance in the decision in the matter of **Voltas Ltd.,** vs. **CCE, Hyderabad-II** reported in 2006 (201) ELT 615 (Tri. Bang.), **CCE, Patna** vs. **Tata Iron & Steel Co. Ltd.,** reported in 1994 (69) ELT 241 (Tribunal) and **National Steel Industries Ltd.,** vs. **Union of India** reported in 2001 (134) ELT 616 (M.P.), submitted that since the appeal against the order of the adjudicating authority passed on 29.08.2007 was pending for final disposal, though, there was no stay granted to the order of the adjudicating authority, the authorities below could not have proceeded to execute the order regarding the confirmation of demand as such an order was yet to attain finality on account of pendency of the appeal against the same. He further submitted that the proceedings regarding the appropriation were on the basis of the order passed by the Central Government on 15.05.2007 as is apparent from the order passed by the Commissioner (Appeals) as well as in the original proceedings in relation to claim of rebate and corresponding appropriation

proceedings. Being so, according to the learned Advocate the order passed by the Hon'ble Madhya Pradesh High Court was equally applicable to the matter in hand.

5. Perusal of the records, undoubtedly disclose that there was an order passed by the adjudicating authority confirming the demand against the respondents to the tune of Rs. 6.02 crores. The same was subjected to challenge by way of the appeal filed by the respondents. During the pendency of the said appeal, there were also proceedings pending for rebate claim at the instance of the respondents and the same claim was allowed. However, instead of granting the refund, the amount which was confirmed by the adjudicating authority against the respondents was sought to be adjusted against the order of rebate.

6. Undoubtedly, it cannot be disputed that in case of appropriation, effect is given to such orders normally by making appropriate book entries. There are no separate execution proceedings as such in relation to such appropriation and consequently immediately on order relating to appropriation being passed, effect can be given to such order by making such book entries. Being so, the contention that merely because there was an appeal pending against the order confirming the demand that the authorities could not have appropriated the amount confirmed against the respondents cannot be accepted. At the same time, it cannot be disputed that if such order of confirmation of demand is set aside in appeal, the authorities will have to accordingly take necessary steps for reversing of the entries and to give appropriate effect to the consequences resulting therefrom. We do not want to say that the Department would be invariably entitled to execute an order passed by the adjudicating authority in each and every case merely because there is no stay by the Appellate Authority. Undoubtedly, in normal course the authorities are advised to stay their hands once the Appellate Authority is seized of the matter and to wait for appropriate decision of the Appellate Authority. It is so because unless the appellate proceedings are concluded, there is no finality to the

adjudication order passed by the lower authority. That by itself will not mean that in each and every case the authority will have to wait for the final decision by the Appellate Authority irrespective of the fact whether there is stay or not. When any dispute arises in relation to the execution of the order during the pendency of the appeal, the same will have to be decided based on facts of each case.

7. In the case in hand, as already observed above, in the absence of stay if the authorities below proceeded merely to decide the issue regarding the claim of rebate and simultaneously gave effect to the claim for appropriation, in our considered opinion, it cannot be said that the authority either exceeded its jurisdiction or exercised its jurisdiction illegally or improperly. In the circumstances, when the matter had come up in appeal before the Commissioner (Appeals), the lower Appellate Authority could not have disposed of the appeal without considering the matter on merits.

8. If one peruses the impugned order, it is apparent that the Commissioner (Appeals) without considering the issue raised in the appeal disposed of the same by merely referring to the order of the Joint Secretary, Government of India and that of the Hon'ble High Court. The order nowhere discloses how the order passed by the Hon'ble High Court in a totally different proceedings could have its effect upon the proceedings in hand. The impugned order does not discuss as to how stay granted to the order dated 15.05.2007 of the Joint Secretary could be a justification for ordering refund of the amount. Once in the appeal there was a specific issue raised regarding the appropriation of the amount, it was necessary for the lower Appellate Authority to decide the same on merits. It was necessary for the lower Appellate Authority to ascertain as to whether such an order of the Hon'ble High Court passed in a different proceedings can have effect upon the proceedings in hand and only an appropriate answer to same, it should have passed

an appropriate order. The impugned order nowhere discloses any such exercise having been done by the Commissioner (Appeals).

9. For the reasons stated above, without going into other issues which are sought to be raised in the matter, the impugned orders are liable to be set aside and matters remanded to the Commissioner (Appeals) to decide the same in accordance with provisions of law. Needless to say that till and until Commissioner (Appeals) decide the appeal in accordance with the provisions of law, the order dated 12th October 2007 and 15th October 2007 passed by the lower authority shall be subject to final outcome of the order to be passed by the Commissioner (Appeals). The appeals disposed of in above terms.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/