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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/2461/2009-2465/2009 - EX[DB] WITH E/S/2540-2544/09-EX   Date 16/03/2010

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

To :
M/S DMS CORPORATION,

171, KARIAPPA MARG, SAINIK FARMS, NEW DELHI.

M/S DMS CORPORATION, Appellant

Vs

C.C.E. NOIDA   STAY ORDER NO.157-161/2010-EX   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 99-103 2010 EX[DB]** dated 19-2-10 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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
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16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

19. M/S MIT CORPORATION,
171, KARIAPPA MARG, SAINIK FARMS, NEW DELHI.

P.T.O.-2

20. MS. DISHA LALWANI, PROPRIETERIX OF
M/S DMS CORPORATION, 171, KARIAPPA MARG, SAINIK
FARMS, NEW DELHI.

21. MS. MONA LALWANI, PROPRIETER OF
M/S MIT CORPORATION, 171, KARIAPPA MARG, SAINIK
FARMS, NEW DELHI.

22. MS. SUBHHASH LALWANI, VICE PRESIDENT OF
M/S MIT CORPORATION, 171, KARIAPPA MARG, SAINIK
FARMS, NEW DELHI.

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

Date of hearing/decision: 19.02.2010

Excise Stay No. 2540 of 2009 in Excise Appeal Nos. 2461 of 2009

M/s DMS Corporation — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Stay No. 2541of 2009 in Excise Appeal Nos. 2462 of 2009

Ms. Disha Lalwani, Proprietrix — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Stay No. 2542 of 2009 in Excise Appeal Nos. 2463 of 2009

M/s MIT Corporation — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Stay No. 2543 of 2009 in Excise Appeal Nos. 2464 of 2009

Ms. Subhash Lalwani, Vice President — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Stay No. 2544 of 2009 in Excise Appeal Nos. 2465 of 2009

Ms. Mona Lalwani, Proprietrix — Appellant

Vs.

CCE, Noida — Respondent

For the appellants- Rep. by Shri A.R. Madhav Rao, Advocate
For the respondent- Rep. by Sh. Nitin Anand, DR

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

STAY Oral order No. 157 – 161 / 10 – EX

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

Considering the facts disclosed in the matter, we find that no purpose would be served by merely granting stay and keeping the matter for final hearing subsequently. Hence we allow the stay applications and direct the Registry to place Appeals Nos. 2461 to 2165 of 2009 for final disposal forthwith. Applications stand disposed of accordingly.

[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: 19.02.2010

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 Nos. 2461 of 2009
[Arising out of order-in-original No. 12/CCE/Noida/2009 dated 20.03.2009 passed by the Commissioner of Central Excise, Noida]

M/s DMS Corporation — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Appeal Nos. 2462 of 2009
[Arising out of order-in-original No. 12/CCE/Noida/2009 dated 20.03.2009 passed by the Commissioner of Central Excise, Noida]

Ms. Disha Lalwani, Proprietrix — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Appeal Nos. 2463 of 2009
[Arising out of order-in-original No. 12/CCE/Noida/2009 dated 20.03.2009 passed by the Commissioner of Central Excise, Noida]

M/s MIT Corporation — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Appeal Nos. 2464 of 2009
[Arising out of order-in-original No. 12/CCE/Noida/2009 dated 20.03.2009 passed by the Commissioner of Central Excise, Noida]

Ms. Subhash Lalwani, Vice President — Appellant

Vs.

CCE, Noida — Respondent

AND

Excise Appeal Nos. 2465 of 2009
[Arising out of order-in-original No. 12/CCE/Noida/2009 dated 20.03.2009 passed by the Commissioner of Central Excise, Noida]

Ms. Mona Lalwani, Proprietrix — Appellant

Vs.

CCE, Noida — Respondent

For the appellants- Rep. by Shri A.R. Madhav Rao, Advocate
For the respondent- Rep. by Sh. Nitin Anand, DR

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

FINAL Oral order No. 99 – 103 / 10 – EX

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

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

2. These appeals are being heard in terms of order passed today in stay application Nos. 2540 to 2544 of 2009.

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

4. The appellants challenge the order dated 20.03.2009 passed by the Commissioner, Noida whereby the duty to the tune of Rs. 1,70,57,533/- had been confirmed against the appellants M/s DMS Corporation and sum of Rs.47,40,942/- against M/s MIT Corporation and equal amount of penalty has been imposed against both the parties besides payment of interest and further penalty against the Proprietor and father of the proprietary firm.

5. Though, the impugned order is sought to be challenged on various grounds, it is not necessary to address to those grounds and suffice to refer to only one ground namely failure on the part of the adjudicating authority to comply with the basic principles of natural justice.

6. The records apparently disclose that pursuant to service of the show cause notice dated 31.01.2008 upon the appellants, by the letter dated 13.31.2008 had requested the respondent to furnish to the appellants all the relied and unrelied documents which were seized by the respondent in the course of the investigation in order to enable the appellants to file appropriate reply to the show cause notice. It is also a matter of record that under letter dated 29.04.2008, the respondent had asked the appellants to collect all such documents.

7. While it is the contention on behalf of the appellants that inspite of repeated efforts on their parts to approach the respondent to collect such documents, they were not furnished with all such documents till 05.03.2009 on which day the appellants addressed a letter to the respondent insisting for furnishing of such documents to enable them to file the reply to the show cause notice. On the other hand, it is the contention on behalf of the respondent that inspite of giving ample opportunities pursuant to letter dated 29.4.2008, the appellants failed to collect the documents and, therefore, it cannot be contended that there was failure of principles of natural justice on the part of the adjudicating authority.

8. Records apparently disclose that under letter dated 05.03.2009 by the appellants to the respondent it was clearly stated thus:-

> "It is therefore submitted that unless the requests made in the interim reply for the supply of relevant records, with relied upon and others are met with it is not possible for the noticees effective final reply to the notice and further to avail of the opportunity for personal hearing".

9. Perusal of the impugned order discloses as under:

> "14.3 Shri Subhash Lalwani, Noticee No. 5, appeared for P.H. on behalf of all the noticees on 05.03.2009. He pointed out that some documents are still pending to be given to him by the Anti Evasion Branch, Central excise, Nodia. Accordingly, the said branch was directed to provide necessary documents by 09.03.2009 and next date of P.H. was fixed for 17.03.2009. In response thereof, necessary documents were provided to Shri Subhash Lalwani on 09.03.2009, by the anti Evasion Branch.
>
> 14.4 Thereafter, Shri Subhash Lalwani, vide letter dated 10.03.2009 pointed out that, some of the documents have been received by them on 09.03.2009. He pointed out that copies of report sent by CE Parwanoo and report sent by Central Excise Delhi has not been made available to them, so far. Thereafter, on 13.03.2009, Shri Manshingh, duly authorized by Sh. Subhash Lalwani, appeared to collect remaining documents. Thereafter, documents mentioned in para 17 to the SCN were made available to above named person, but he showed his unwillingness to receive non-RUDs due to conveyance problem at his end. These non-RUDs were received by him only on 16.03.2009.
>
> 14.5 Shri Subhash Lalwani, appeared for all noticees for P.H. on 17.03.2009. He argued that no SCN was issued in respect of records seized from Parwanoo and Delhi, which were seized on the instance of Noida Commissionerate. On being asked he failed to give any reason for non collecting necessary documents from the department despite writing a letter on 29.04.2008. He failed to file any written defence despite being given last opportunity on 17.03.2009".

10. Bare perusal of the letter dated 05.03.2009 by the appellants addressed to the respondent and above quoted paras of the impugned order disclose that till 13.03.2009 the appellants were not furnished with all the relevant documents. It may be that there was some lapse on the part of the appellants in not collecting the relevant documents on 13th March and they collected the same on 16th March but that was not a justification to dispose of the matter within four days thereafter. Once it is an undisputed fact that all the relevant documents were not made available, and, there was no dispute raised by the Department about the relevancy of such documents for the appellant to file the reply to the show cause notice, it was necessary for the adjudicating authority to grant sufficient time to file the reply and to allow all the relevant material what the appellants wanted to produce in support of their defence in the matter. The records nowhere disclose any such fair opportunity having been given to the appellants before passing the impugned order on 20.03.2009. On this ground alone the impugned order needs to be set aside and matter remanded to the adjudicating authority in order to enable the appellants to defend their case effectively.

11. It is to be noted that the appellants filed their reply on 23.04.2009, when they were not aware of the fact that the impugned order had been passed as the same was received by the appellants on 27.05.2009.

12. The adjudicating authority should consider the reply dated 23.04.2009 in the defence putforth by the appellants to the show cause notice and, therefrom proceed with the matter afresh giving proper opportunity to the parties to place before him all the relevant materials in support of rival contention in relation to the merits of the case.

13. The adjudicating authority thereupon shall pass appropriate order. Accordingly, the matters are remanded to the adjudicating authority. For the reasons stated above, the appeals are allowed. It is made clear that we have not expressed any opinion on the merits of the case.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/