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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

Date 06/04/2010

Appeal No. E/3159/2009-3169/2009 - EX[DB] WITH
E/S/3247-3257/2009-EX

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

To :
M/S JINDAL PHOTO LIMITED,
PHASE-I, SIDCO INDUSTRIAL GROWTH CENTRE,
SAMBA (J&K). Appellant
M/S JINDAL PHOTO LIMITED, Vs
Respondent
C.C.E. CHANDIGARH STAY ORDER NO.228-238/2010-EX

I am directed to transmit herewith a certified copy of **Final order No. 142-152/ 2010 EX[DB]** dated 01-4-10 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
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
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Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Stay 3247-57 /2009, E/Appeal Nos.3159-69/2009-Ex(Br)

(Arising out of order in appeal No.106-114/CE/stay/Chd.II/JK/2009 dated 30.9.09 passed by the Commissioner of Central Excise(Appeals), Chandigarh-II)

M/s Jindal Photo Ltd — Applicant

Vs

CCE, Chandigarh — Respondent

Appeared for Appellant : Shri L.P. Asthana, Advocate
Appeared for Respondent : Shri R.K. Verma, SDR

Coram: **Hon'ble Mr. D.N. Panda, Judicial Member**
**Hon'ble Mr.Rakesh Kumar, Technical Member**

Date of Hearing: 29.3.2010

Final Order No. 142 to 152/2010. /2010-
Stay order No. 228 to 238/2010

Per D.N. Panda:

The Appellant being aggrieved by the order passed by the learned Commissioner (Appeals) on 8.8.2009 dismissing all the 11 appeals on the ground that the stay order was not complied and also holding that the amount not refundable shall be recoverable in terms of the impugned Notification, came in appeal before Tribunal.

2. Shri Asthana learned Advocate appearing on behalf of the appellant submits that the order rejecting the refund application did not give rise to recovery of the demand for which no exercise of the power by the learned Commissioner (Appeals) under Section 35-F was warranted. Rather appeals of the Appellant should have been disposed. He cites one sample order dated 19.11.2008 passed by the learned Adjudicating Authority not showing recovery of any demand. According to him, if there is no

recovery, there is no question of passing an order for pre-deposit. So also his submission is that error was committed by the learned Commissioner (Appeals) to reject the Modification Application in terms of an order dated 30.9.2009 which was uncalled for. All these errors gave rise to cause for approaching the Tribunal to send the matter back to the learned Commissioner (Appeals) to decide the issue afresh.

3. Shri Asthana further submits that the whole case is to be tested in terms of Notification. Duty realized is deposited to avail set off/adjustment thereof against further duty liability in respect of finished goods manufactured and cleared. If such adjustment is permissible, the Notification requires the authority to do so. If any excess amount is availed as credit without being refundable, that shall be treated as irregularly availed credit. He relies on para 2(g) of the Notification to submit so.

4. While it is submitted by the learned Counsel to send the matter back to the learned Appellate Authority, Revenue's submission is that if refund is rejected the amount becomes recoverable and that has been rightly done by the learned Commissioner (Appeals) rejecting the stay applications filed by the appellant who preferred to file stay application before him. Once the stay order is not complied, the appeals were liable to be dismissed and that was so done.

5. We have gone through the order in original appearing at page 25 of the appeal folder in E/Appeal No. 3159/09. That order shows rejection of the refund without any intention therein to recover the amount not refundable. Therefore, we checked up whether any non-refundable amount is proposed by the order of

adjudication for recovery as demand. There is no answer to this by Revenue saying that refund applications were rejected and the rejected amount shall be recoverable. This does not appeal to common sense when there is no order for recovery.

6. We read para 2(g) of the impugned Notification dealing with irregularly availed credit and availing of credit in excess of the amount determined for refund correctly. Recovery of any amount under law is to be done by a speaking order passed in that behalf. Once we appreciate such an proposition as averred by the learned Counsel, we are of the opinion that no stay order was required in the appeals to be passed by the learned Appellate Authority below. But the appellant itself conceived that there is demand for recovery for which stay applications were filed. Once such applications were filed, we do not consider it improper for the learned Commissioner (Appeals) to pass appropriate order, which he has done by rejection. However, to resolve the dispute, it would be proper to send the matter back to the learned Adjudicating Authority to pass appropriate order if unrefundable amount, if any, shall be recoverable in accordance with law and on the basis of Notification relied upon by both sides. If he considers that there shall be appropriate demand, he shall grant proper opportunity of hearing to the appellant and dispose the matter as may be appropriate under law to meet the ends of justice.

7. Since a question of law as above was involved in this batch of appeals and interpretation of respective clauses of Notification, we dispose the stay applications without expression of any opinion considering those to be infractuous. All the 11 appeals of this batch are also accordingly disposed of with the aforesaid direction

to the appellants to appear before the learned Adjudicating Authority on 30th April, 2010 and cooperate him for a fair opportunity of hearing to dispose the matter. If the appellants fail to appear on that day, the Adjudicating Authority shall pass appropriate order as may be considered proper in accordance with law.

8. In the result, all the appeals are remanded to the learned Adjudicating Authority setting aside orders of both the Authorities below

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*

(Rakesh Kumar)
Technical Member