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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 30/09/2010

Appeal No. E/2002/2009-2006/2009 & 2915-2917/2009 - EX[DB]
E/S/2072-2076&3014-3016/2009-EX

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

To :
M/S CHEMICAL CORPORATION,
HD-13, INDUSTRIAL AREA, SIKANDRABAD,
DISTT. BULANDSHAHR (U.P.)
M/S CHEMICAL CORPORATION,

Appellant

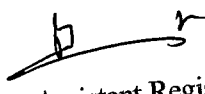
Vs
Respondent

C.C.E. NOIDA

STAY ORDER NO.695-702/2010-EX

2010 EX[DB] dated 29-9-10

I am directed to transmit herewith a certified copy of Final order No. 665-672/
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.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

3 C.D.R

~~4 I.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise, I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

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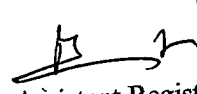
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-

12 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

14 Office Copy

15 Guard file


Assistant Registrar
(Excise Appeal Branch)

16, SHRI AAKASH SHARMA (PARTNER) OF
M/S KRISHNA CHEMICALS, HD-13, INDUSTRIAL AREA,
SIKANDRABAD,
DISTT. BULANDSHAHR (U.P.)

P.T.O-2

-2-

SHRI BRIJESH MISHRA (PARTNER) OF
M/S CHEMICAL CORPORATION HD-13, INDUSTRIAL AREA,
SIKANDRABAD,
DISTT. BULANDSHAHR (U.P.)

18. SHRI RAKESH MISHRA (PARTNER)
M/S CHEMICAL CORPORATION HD-13, INDUSTRIAL AREA,
SIKANDRABAD,
DISTT. BULANDSHAHR (U.P.)

19. SMT. SHASHI MISHRA (PARTNER) OF
M/S CHEMICAL CORPORATION HD-13, INDUSTRIAL AREA,
SIKANDRABAD,
DISTT. BULANDSHAHR (U.P.)

20. M/S. CHEMICAL CORPORATION,
HD-10, INDUSTRIAL AREA,
SIKANDRABAD DISTT. BULANDSHAHR (UP)

→ 21. M/S. CHEMI ZONE INDIA,

→ 22. M/S. KRISHNA CHEMICALS,

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. II

DATE OF HEARING : 13/9/10.

**Excise Stay Application No. 2072 of 2009 in Appeal No.
2002 of 2009**

M/s Chemical Corporation Appellant

Versus

CCE, Noida Respondent

**Excise Stay Application No. 2073 of 2009 in Appeal No.
2003 of 2009**

Shri Rakesh Mishra Appellant

Versus

CCE, Noida Respondent

**Excise Stay Application No. 2074 of 2009 in Appeal No.
2004 of 2009**

Shri Aakash Sharma Appellant

Versus

CCE, Noida Respondent

**Excise Stay Application No. 2075 of 2009 in Appeal No.
2005 of 2009**

Shri Brijesh Mishra Appellant

Versus

CCE, Noida Respondent

**Excise Stay Application No. 2076 of 2009 in Appeal No.
2006 of 2009**

Smt. Shashi Mishra Appellant

Versus

CCE, Noida Respondent

**Excise Stay Application No. 3014 of 2009 in Appeal No.
2915 of 2009**

M/s Chemical Corporation

Appellant

Versus

CCE, Noida

Respondent

**Excise Stay Application No. 3015 of 2009 in Appeal No.
2916 of 2009**

M/s Chemi Zone India

Appellant

Versus

CCE, Noida

Respondent

**Excise Stay Application No. 3016 of 2009 in Appeal No.
2917 of 2009**

M/s Krishna Chemicals

Appellant

Versus

CCE, Noida

Respondent

Appearance

Shri Bipin Garg, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (Jt. CDR) – for the Respondent.

**CORAM: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member**

STAY Order No. 695-702/10-EX Dated:
 FINAL Order No. 665-672/10-EX
ORDER

Per. D.N. Panda :-

Learned counsel Shri Bipin Garg raises a fundamental point
that the adjudication has been done raising excise duty demand

of Rs. 93,21,747/- with equal amount of penalty without following due course of justice. A small paper book filed on 19/11/09 before Tribunal discloses the manner how the appellant was praying for adjournment to provide fair opportunity of hearing engaging a new counsel and also prayed for providing documents. This paper book is taken to record. There is no objection to the contents ^{of} this paper book by revenue.

2. Learned counsel also submits that certain documents were not given to the appellants for which the appellant was deprived of furnishing reply to the show cause notice. His prayer is that if department provides entire set of documents to the appellant, within one month thereof, reply to show cause notice shall be submitted by the appellant and the authority can fix date of hearing thereafter.

3. We do appreciate from the paper book filed by Appellant that the appellant may or may not have a case. But he cannot be deprived of process of justice.

4. Learned DR vehemently objects to the averments of appellant.

5. Heard both the sides and perused the records.

6. Specifically, we looked into para 22.2 of the order of adjudication. There were four concerns mentioned in the table

appearing under that para. Learned Adjudicating Authority intended to club the turnover of three units in the hands of the appellant. Such a clubbing may deprive the appellant from incentive under law. We have also looked into para 62.9.1 order of adjudication, where the authority has described how the appellant was proposed to be dealt. We are not expressing any opinion on merit at this stage. But we do appreciate that the appellant should not take recourse to dilatory tactics if the matter is remanded. As a precautionary measure, following the judgment of the Hon'ble High Court of Punjab & Haryana in the case of **Shiv Sewa Sadan vs. CESTAT, New Delhi** reported in **2010 (254) E.L.T. 249 (P&H)**, we direct the appellant to make deposit of 25% of the excise duty demand of Rs. 93,21,747/- within eight weeks from today and file copy of the challan before the learned Adjudicating Authority within a week thereafter for grant of opportunity of hearing. If such a challan is filed alongwith an application to provide copies of relied document, learned authority shall fix appropriate date to provide copies of such document and issue the same to the appellant obtaining acknowledgement. Once the documents are settled to be supplied and supplied, within one month thereof the appellant shall file reply to show cause notice and the authority thereafter shall fix date of hearing. We make it clear to the appellant that once date is fixed for hearing, the appellant shall not seek for adjournment on any ground except reasonable cause if any warranting adjournment. It is expected that the learned Adjudicating Authority within three months of completion of

hearing, shall pass appropriate order. In view of aforesaid direction, we dispose the stay applications as well as the appeal in the manner indicated above.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK