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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/1817/2005-1826/2005 - EX[DB]
E/1699-1707/06, E/2052-2057/06

Date 13/05/2010

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

To :
NEPTUNE STATIONERY PVT. LTD.
399/4,MHOW NEEMUCH ROAD PITHAMPUR DISTT
DHAR M.P.
NEPTUNE STATIONERY PVT. LTD.

Appellant
Vs
Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order No.** 299-323/ 2010 EX[DB] dated 28-4-10 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   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 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
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15 HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

16. KORES (INDIA). LTD.
KORES HOUSE PLOT NO-10,OFF.DR.E.MOSES ROAD WORLI
MUMBAI
17. SH. S.K.THIRANI,
18. SH. LT. COL HARBHAJAN SINGH,
19. SH. RAJI ANTHONY,

P.T.O. -2

20. MARS STATIONARY PVT. LTD.
399/2/1,MHOW NEEMUCH ROAD PITHAMPUR,DISTT-DHAR
M.P.

21. SH. S. S. BHANDARI,
M/S. ECONOPRINT STENCILS, PITHAMPUR

22. NEEPTUNE SATIONERY PVT.LTD.
399/2/4,MHOW NEEMUCH ROAD PITHAMPUR DISTT DHAR
M.P.

23. NEHA STATIONARY PVT. LTD.
399/2/2,MHOW NEEMUCH ROAD PITHAMPUR DISTT DHAR
M.P.

24. MARS STATIONENERY PVT.LTD.
399/2/2,MHOW NEEMUCH ROAD PITHAMPUR DISTT DHAR
M.P.

25. NANDINI STATIONARY PVT. LTD.
399/2/3 MHOW NEEMUCH ROAD PITHAMPUR DISTT DHAR
M.P

26. SH. R. K. HASIJA, ADV.,
B-6/10, S. J. ENCLAVE, N. DELHI-29

27. SH. R.K. VERMA, ADV.,
NO VAKALATNAMA

28. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

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

Date of hearing/decision: 28.04.2010

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

Sl. No.	Appeal No.	Name of the appellant	Respondent	Arising out of the order in appeal No. and date	Passed by the
1	E/1817/05	M/s Neptune Stationery Pvt. Ltd.	CCE, Indore	20 to 29-CE/IND/ APPL-II/2005 dt. 31.01.2005	CCE, Indore
2	E/1818/05	M/s Mars Stationery Pvt. Ltd.	-do-	-do-	-do-
3	E/1819/05	M/s Neha Stationery Pvt. Ltd.	-do-	-do-	-do-
4	E/1820/05	M/s Nandini Stationery Pvt. Ltd.	-do-	-do-	-do-
5	E/1821/05	M/s Neha Stationery Pvt. Ltd.,	-do-	-do-	-do-
6	E/1822/05	M/s Neptune Stationery Pvt. Ltd.	-do-	-do-	-do-
7	E/1823/05	M/s Neptune Stationery Pvt. Ltd.,	-do-	-do-	-do-
8	E/1824/05	M/s Mars Stationery Pvt. Ltd	-do-	-do-	-do-
9	E/1825/05	M/s Kores India Ltd.	-do-	-do-	-do-
10	E/1826/05	M/s Kores India Ltd.	-do-	-do-	-do-

Appearance: Rep. by Sh. Ramesh Nair & Sh. R.K. Hasija, Advocates for the appellants.
Rep. by Sh. R.K. Verma, Advocate for the respondent.

AND

Sl. No.	Appeal No.	Name of the appellant	Respondent	Arising out of the order in original No. and date	Passed by the
11	E/1699/06	CCE, Indore	M/s Mars Stationery Pvt. Ltd.	27, 28, 29/ COMMR/ CEX/ IND/05 dt. 18.3.05	CCE, Indore
12	E/1700/06	-do-	M/s Neha Stationery Pvt. Ltd.	-do-	-do-
13	E/1701/06	-do-	M/s Nandini Stationery Pvt. Ltd.	-do-	-do-
14	E/1702/06	-do-	M/s Neptune Stationery Pvt. Ltd.	-do-	-do-
15	E/1703/06	-do-	M/s Kores India Ltd.	-do-	-do-
16	E/1704/06	-do-	Sh. S.K. Thirani, Chairman	-do-	-do-
17	E/1705/06	-do-	Lt. Col. Harbhajan Singh (Retd.)	-do-	-do-
18	E/1706/06	-do-	Sh. Raji Anthony	-do-	-do-
19	E/1707/06	-do-	Sh. S.S. Bhandari	-do-	-do-
20	E/2052/06	-do-	M/s Kores India Ltd.	OIA No. IND-I/109-114/2006 dt. 20.3.2006	Commr (A) CCE, Indore
21	E/2053/06	-do-	M/s Mars Stationery Pvt. Ltd.	-do-	-do-
22	E/2054/06	-do-	M/s Neha Stationery Pvt. Ltd.	-do-	-do-
23	E/2055/06	-do-	M/s Nandini Stationery Pvt. Ltd.	-do-	-do-
24	E/2056/06	-do-	M/s Neptune Stationery Pvt. Ltd.	-do-	-do-
25	E/2057/06	-do-	Sh. S.K. Thirani, Chairman	-do-	-do-

Appearance: Rep. by Sh. R.K. Verma, Advocate for the Appellant.
Rep. by Sh. Ramesh Nair & Sh. R.K. Hasija, Advocates for the respondents.

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

FINAL Oral order No. 299-323/10-Ex.

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

Since common questions of law and facts arise in all these matters they were taken up for hearing together and are being disposed of by this common order.

2. In all these matters issue involved relates to denial of SSI exemption under Notification No. 1/93-CE dated 28.2.93 on the ground that the different units were not independent units and they were liable to be clubbed together to consider the claim regarding the said exemption.

3. Pursuant to the investigation carried out by the Department, it was revealed that M/s Kores India Limited with the expansion of their business had started different units in different names essentially to avail the benefit of exemption under SSI exemption notification. Consequently, show cause notice dated 25.03.97 came to be issued requiring them to show cause as to why all the units should not be clubbed to consider the claim regarding the said exemption. On adjudication of the said proceedings, the Commissioner accepted the contention on behalf of the Department and confirmed the duty demanded under the show cause notice under its order dated 30.03.98. Being dissatisfied, the matter was carried in appeal before this Tribunal without any success. However, when the party being aggrieved by the order of the Tribunal approached the High Court of Madhya Pradesh in Writ Petition No. 2131-2138/2000, the Hon'ble High Court by its order dated 17.11.2005 allowed the petitions and set aside the order passed by the Tribunal and the Commissioner and remanded the matter for fresh adjudication and appropriate decision in accordance with provision of law.

4. Meanwhile, the assessee continued with the same practice of claiming exemption on the same grounds. Various show cause notices were issued for different periods and all those proceedings were disposed of by the impugned orders. While in some of the orders, the demand was confirmed whereas some other matters they were dropped in favour of the assessees.

As against the orders against the assessees, they are in appeal whereas in case of orders in favour of the assessees, the Department has filed the appeals.

5. In the facts and circumstances of the case and taking into consideration the order of the High Court in Writ Petition NO. 2131-2138/2000 only point which arises for consideration is whether the parties should be entitled to pursue the present remedy of the appeal in relation to the merits of the case or whether the matters will have to go back before the Commissioner to be decided alongwith matters which have been remanded by the High Court.

6. The Hon'ble High Court, while disposing the Writ Petition and remanding the matter, has observed thus:-

> "8. After having heard learned counsel for the parties and going through the material available on the record, in the considered opinion of this Court, this bunch of writ petitions can be disposed of on the short ground. After filing of the present writ petitions, Revenue authorities, for the subsequent assessment period, have accepted the contention of the petitioner that the manufacturing SSI units and the petitioner company cannot be clubbed together in the light of the Circulars issued by the Board from time to time. The Circulars, which have the statutory force, were not taken into account by the adjudicatory authority or the Tribunal while passing the orders, which are the subject matter of the present bunch of writ petitions. For the subsequent period, Revenue authorities have treated the manufacturing units as separate from petitioner and thus, accepted that there is a relationship of buyer and seller between the petitioner and the four manufacturing units without any mutuality. Decision of the Tribunal passed on 04.08.2004, is included in the compilation of judgements filed by the petitioner that is part of record. It is also pertinent to point out that pursuant to the order of the Tribunal, adjudicatory authority has passed the order dated 18.3.2005 and the proceedings were dropped. The decision of the Tribunal is based upon the law laid down by the Supreme Court in the matter of Gajanan Fabrics Distributors vs. Collector of Central Excise, Pune 1997 (92) ELT 451 (S.C.) and Supreme Washers (P) Ltd., vs. Commissioner of Central Excise, Pune 2003 (151) ELT 14 (S.C) (supra). Ratio laid down by Supreme Court in these decisions is squarely applicable to present bunch.

9. In view of the aforesaid, there is no hesitation in the mind of this Court to accept the preliminary contention of learned senior counsel for the petitioners and set aside the order impugned passed by the Tribunal and refer the matter back to the adjudicatory authority for a fresh decision in accordance with law. Needless to say that, this Court has not examined or touched merits of other various contentions, therefore, adjudicatory authority while deciding the matter afresh would not preclude from giving its own decision. This is equally applicable to the plea of extended period of limitation raised on behalf of the petitioner. Since the matter is pending from 2000 and pertained to the levy of excise duty for the period from September 1992 to December 1996, therefore, the adjudicatory authority is requested to hear and decide the matter expeditiously, if possible within a period of four months from the date of communication of the certified copy of this order. At this stage, it is also pertinent to point out that as against the demand certain amount has already been deposited with the Revenue authorities before filing the present bunch of writ petitions. At the time of considering the prayer for interim relief, this Court had directed to deposit further 50% of the balance amount and to furnish bank guarantee for the remaining amount. Directions issued by this Court have also been complied with. Thus, the deposits made and BG shall remain in force until the adjudicatory authority passes the final order. At the time of the passing of the final order, the adjudicatory authority shall deal with this aspect of the matter in accordance with law and issue appropriate directions.

10. The upshot of the whole discussion is that these writ petitions are disposed of with the directions as indicated hereinabove. However, in the present facts and circumstances, there shall be no orders as to costs".

7. Plain reading of the order passed by the High Court would disclose that the findings arrived at by the Commissioner in the order dated 30.3.98 in relation to the merits of the case stand set aside and adjudicating authority is required to adjudicate upon all the issues afresh and is required to arrive at an appropriate finding based on the materials on record before the authority. It is also undisputed fact that in all the proceedings where the impugned orders have been passed, the same had proceeded solely on the basis of the finding arrived at by the Commissioner in the order dated 30.3.98 and on the basis that similar situation and circumstances prevail the impugned orders came to be passed. Even in cases, where the matters have been dropped, certain issues have been decided solely on the basis of the order

dated 30.3.98. In this background, simultaneously all these proceedings, which have been culminated by the impugned orders are liable to be quashed and set aside and matters need to be remanded to the adjudicating authority to be decided alongwith the matters which have been remanded by the High Court in the said Writ Petition. Needless to say while deciding the present matters, the authority will have to bear in mind the observations made by the High Court in its order.

8. Consequently, without expressing any opinion on the merits of the case, the impugned orders are hereby set aside and matters are remanded to the adjudicating authority to deal with proceedings afresh in accordance with provisions of law alongwith proceedings in the matters which are remanded by the High Court under the above stated orders.

9. It has been brought to our notice that in some of the orders, the adjudicating authority is the Assistant Commissioner whereas in some of the cases, it is the Commissioner including the Additional Commissioner. However, considering the nature of controversy, it would be appropriate to hear all the matters by the same authority and to deal with them together and to dispose them simultaneously.

10. It is also informed on behalf of the assessees that in the already remanded case, the hearing has already been concluded before the Commissioner, Indore. It would be appropriate that all other matters are also taken up for hearing by the Commissioner, Indore and to dispose of the same alongwith the matters already heard.

11. Accordingly, all these appeals are allowed. The impugned orders are set aside and the matters are remanded to the Commissioner, Indore, to be decided alongwith matters which have been remanded by the Madhya Pradesh High Court by its order dated 17.11.05 in Writ Petition No.2131-38. As the matters pertain to the years prior to 2006, the Commissioner shall expedite the hearing thereof and shall dispose of all the matters prior to 31.12.2010.

12. All the appeals are accordingly disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/