

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/136 /2009 - EX[DB] WITH E/M/565/2009-EX

Date 16/07/2010

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

To :
M/S EURO COTSPIN LTD,
VILLAGE-DEHAR, LALRU, DISTT. PATIALA.
M/S EURO COTSPIN LTD,

Appellant

Vs
Respondent

C.C.E. CHANDIGARH

MISC ORDER NO.398/2010-EX

2010 EX[DB] dated 05-7-10

I am directed to transmit herewith a certified copy of **Final order No. 447**
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.NAVEEN BINDAL,

1640/1, SECTOR 40-B, CHANDIGARH.

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 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

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

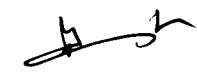
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)

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

16. HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

**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. I

DATE OF HEARING : 05/07/2010.

DATE OF DECISION : 05/07/2010.

**Excise Misc. Application No. 565 of 2009 in Appeal No. 136
of 2009**

[Arising out of the Order-in-Original No. 152-157/CE/CHD/08
Dated 15/09/2008 passed by The Commissioner, Central Excise,
Chandigarh.]

For Approval and signature :

**Hon'ble 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 would 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? | : See |
| 4. | Whether order is to be circulated to the Department Authorities? | : Y |
-
- M/s Euro Cotspin Ltd. Appellants

Versus

CCE, Chandigarh

Respondent

Appearance

None – for the Appellants.

Shri Virender Choudhary, Authorized Representative (DR) – for the Respondent.

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

Misc order No. 398/10-Ed

Final Order No. 447/10-Ed Dated : 5.7.10

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

By order dated 8th of May 2009 passed in stay application No. 149 of 2009, the applicants were required to deposit sum of Rs. 50,00,000/- within eight weeks and to file a compliance report on 9th July 2009. On 9th July 2009, it was found that the appellants had not complied with the said order and, therefore, the matter was fixed for appropriate order on 3rd August 2009 giving opportunity to the appellants to satisfy the Tribunal as to why the appeal should not be dismissed for non-compliance of requirement of pre-deposit.

2. Matter was thereafter listed to 20th August 2009, which was adjourned to 5th October 2009 at the request of the learned advocate for the appellants.

3. Matter thereafter appeared on 8th March 2010, which was again adjourned to 28th June 2010. Nobody had appeared for the appellants on the said day, though the learned DR was present. Today when the matter is called out in the morning session nobody had appeared for the appellants and, therefore, the matter was kept back. It is already 16:10 p.m., none present for the appellants and Shri Virender Choudhary, learned DR present for the respondent.

4. The application for modification filed by the appellants is on the ground that the application filed by the applicants to the Development Commissioner, Noida for refund of the amount in

relation to the export made by the applicants is pending. Copy of such claim has been annexed to the application as Annexure B. The same is dated 2nd June 2008, much prior to the date of passing of the order, which is sought to be modified. Besides, the letter is in relation to the claim against Ministry of Commerce and Industry. It is not disclosed as to what transpired after 2nd June 2008 in relation to the said claim. In any case merely because there is a claim for refund against some other Ministry and that too without disclosing any justifiable ground in support of such claim cannot be the basis for modification of the well reasoned order passed by the Tribunal after taking into consideration all the pros and cons.

5. The conduct of the applicants apparently discloses that the applicants are not interested in depositing the amount, nor there is anything on record, which could disclose any justification for non-deposit of the amount ^{or} for non-dismissal of the appeal on that ground. In the circumstances, the consequences contemplated under Section 35F are bound to follow and accordingly appeal alongwith the application for modification, dismissed for non-compliance of the order.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK