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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 21/07/2010

Appeal No. E/493 /2010 - EX[DB] with E/M/2410/10-EX

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

To :
M/S. V. S. INDUSTRIES
LANE NO.4-B, PHASE-III, SIDCO INDUSTRIAL
COMPLEX, BARI BRAHMANA, JAMMU
181133

Appellant
Vs
Respondent

M/S. V. S. INDUSTRIES

C.C.E. JAMMU

MISC ORDER NO.410/2010-EX

I am directed to transmit herewith a certified copy of **Final order No. 513/ 2010 EX[DB]** dated 09-7-10 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. JAMMU
   OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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-1
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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 2, R.K.Puram,New Delhi-110066
Principal Bench, New Delhi.

E/M/240/10 in E/493/10

M/s. V.S.Industries Appellant

Versus

CCE, Jammu Respondent

Appearance
Sh. Sudhir Malhotra, Adv. For Appellants

Sh. Sunil Kumar, DR for Respondent

Coram: Hon'ble Mr. JUSTICE R.M.S.KHANDEPARKAR, PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 9.7.2010
Misc Order No. 410/10-EX

Per Justice R.M.S.Khandeparkar;

Heard learned Advocate for the appellants and learned DR for the respondent. Considering the facts of the case, the application for early hearing of the appeal is allowed. Registry is directed to fix the appeal forthwith for hearing. The Misc. application stands disposed of.

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block 2, R.K.Puram,New Delhi-110066
Principal Bench, New Delhi.

E/493/10

(Arising out of Order-in-Appeal No.608/CE/Appl/Chd-II(JK)2009 dt.29.10.09 passed by the Commissioner(Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. 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?	:	Seen
4.Whether order is to be circulated to the Department Authorities:	:	Yes

M/s. V.S.Industries — Appellants

Vs

CCE, Jammu — Respondent

Appearance
Shri Sudhir Malhotra, Adv. For Appellants

Shri Sunil Kumar, DR for Respondent

Coram: Hon'ble Mr. JUSTICE R.M.S.KHANDEPARKAR, PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 9.7.2010
FINAL Oral Order No. 513/10-EX

<u>Per Justice R.M.S.Khandeparkar</u>

The appeal has been filed against the order dated 29.10.09 passed by Commissioner, Chandigarh. The matter relates to claim of refund of Education Cess which was paid by the appellants.

2. The appellants are engaged in the manufacture of Menthol, De-Mentholised Oil classifiable under sub-heading 2906 11 00 and 3301 25 90 respectively of the first schedule to the Central Excise Tariff Act,1985 and having their factory in the state of J&K. The appellants filed refund claim for Rs.1,06,86,335/- on the ground that the Excise Duty, Education Cess and S&H Education Cess was paid through PLA for the month of August,2007 under Notification No.56/2002-CE dated 14.11.02. The party had exercised option vide their letter dt.26.4.06 to avail the facility of self-credit for the financial year 2006-07 under the said notification. The adjudicating authority allowed the refund of Rs.1,03,82,910/- while rejected the claim for an amount of Rs.2,07,501/- as it related to the payment of Education Cess on the ground that such payment was not under the Notification N0.56/02-CE dt.14.11.02 as also an amount of Rs.1,03,751/- which was paid as High Education Cess. The matter in that regard was carried in appeal before Commissioner(Appeals). However, the appeal was filed beyond the period of two days. The Commissioner(Appeals) rejected the appeal on the ground that there was no request for condonation of delay in filing the appeal.

3. Learned Advocate for the appellants submitted that since there was delay of only two days in filing the appeal, merely because there was no written application, the lower appellate authority was not justified in rejecting the appeal.

4. Learned DR submitted that irrespective of the point, which was sought to be canvassed, there was no substance in the claim of the appellants. As far as the refund of the amount pertaining to Education Cess and High Education Cess is concerned, the issue in that regard has already been settled by the Tribunal in the matter of CCE, Jammu vs M/s. Jindal Inds. delivered on 30.11.09.

5. The claim for refund was essentially on account of amount which is refundable in terms of Notification No.56/02-CE dated 14.11.02. The Tribunal has clearly held in the said case of Jindal Inds. matter that the amount of Education Cess and High Education Cess does not form part of the excise duty under the said notification as the cess amount is collected in terms of the provisions of Finance Act,2004. Considering the same as there is no case on merits at all, we do not find it to be a fit case for interference in the impugned order irrespective of the fact that there was delay of only two days in filing the appeal.

6. In the circumstances, we dismiss the appeal.

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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