TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/S/1226/2010 IN E/1179/2010 - EX[DB] Date 19/11/2010

Assistant Registrar

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

To :

M/S. S B EQUIPMENTS

S-595/C, NEHRU ENCLAVE, SHAKARPUR, DELHI

110092

M/S. S B EQUIPMENTS Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ~~796~~ Stay. O. No. **880/10** **2010 EX[DB]** dated 29.10.2010 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. DELHI II

   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult
   MR.PRABHAT KUMAR

   B-51(BASEMENT)SARVODAYA ENCLAVE
   NEAR MOTHER INTERNATIONAL SCHOOL, NEW DELHI

3. S.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. 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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:29.10.2010

Stay Application No.1226 of 2010 in
Central Excise Appeal No.1179 of 2010

Arising out of the order in appeal No.67/CE/D-II/2010 dated 22.2.2010 passed by the Commissioner (Appeals), Central Excise, Delhi II.

M/s S.B. Equipments ... Appellants/applicants

Vs.

C.C.E., Delhi II .... Respondent

Appearance:

Shri Prabhat Kumar, Advocate for the appellants/applicants
Shri Nitin Anand, Authorized Departmental Representative (SDR) for the Revenue

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

STAY Oral Order No. 880 / 10-EX

Per Shri Justice R.M.S. Khandeparkar:

As we propose to dispose of the appeal itself, we allow the application for stay without insisting for pre-deposit. Registry to place the appeal itself for final hearing forthwith. Application stands disposed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:29.10.2010

Central Excise Appeal No.1179 of 2010

Arising out of the order in appeal No.67/CE/D-II/2010 dated 22.2.2010 passed by the Commissioner (Appeals), Central Excise, Delhi II.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter 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 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

M/s S.B. Equipments ... Appellants

Vs.

C.C.E., Delhi II .... Respondent

Appearance:

Shri Prabhat Kumar, Advocate for the appellants/applicants
Shri Nitin Anand, Authorized Departmental Representative (SDR) for the Revenue

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

FINAL Oral Order No. 796/10-EX

Per Shri Justice R.M.S. Khandeparkar:

This appeal arises from the order dated 22.2.2010 passed by the Commissioner, New Delhi. By the impugned order, the lower appellate authority has dismissed the appeal filed by the appellants against the order of adjudicating authority. The Assistant Commissioner, Delhi by his order dated 31.3.2009 and corrigendum dated 28.4.09 had confirmed the demand of Rs.1,87,078/- and Rs.3,742/- as education cess and further, interest thereon as also penalty of equal amount.

2. The appellants are engaged in the manufacture of excisable goods, namely, Casualty Bag, Decontamination Solution, First Aid Kit, Auto Injector,Survival Blanket & Mosquito Repellent Spray classifiable under sub-heading No.6201.00, 3824.90, 3005.90, 9018.00, 6301.90 and 3303.00 of the first schedule to the Central Excise Tariff Act, 1985 and are not availing cenvat credit. During the course of audit, the officers of the Department noticed that the appellants had started manufacturing from their another unit and also availing cenvat credit facility and utilizing the same at the time of clearance of the goods manufactured from the first unit. Simultaneously, they continued to avail the value based exemption under Notification No.8/2003 dated 1.3.03 whereby the excisable goods up to clearance value of Rs.1 crore in a financial year from one or more factories were exempted from payment of excise duty. The appellants crossed the said limit in the month of January 2006 and since then both the units became liable to pay duty. Under their letter dated 15.06.08, the appellants submitted that clearance from both the units were of Rs.36,16,096/- on only. Therein, while disclosing the break-up, they disclosed that they had cleared the glass cartridge from their Shakarpur unit of the value of Rs.32,22,356/-. It was found that the appellants had paid the duty only on clearance of Rs.42 lakhs in the month of March 2006 and goods worth of Rs.45,50,000/- were sought to be cleared under Notification No.64/95 as exempted. Hence, the duty liability of the appellants for the month of January 2006 on the clearance value of Rs.4,47,240/- and in the month of February 2006 on the clearance value of Rs.7,22,000/- totaling to Rs.11,69,240/- was calculated at Rs.1,87,078/- besides, Rs.3,742/- as education cess after crossing SSI limits. Consequently, the show cause notice dated 2.1.2003 came to be issued which was contested. The specific defence which was raised by the appellants was that they did not have any facility for plant or machinery for manufacturing glass cartridge in their premises and entry of recording glass cartridge in the RG-1 register was purely by mistake. In fact, the said product was procured from the market and they had necessary invoice in that regard.

3. The adjudicating authority however, while observing that no documentary evidence was produced about absence of facility to manufacture glass cartridge by the

appellants rejected their claim and confirmed the demand. The said finding was not interfered with by the Commissioner (Appeals).

4. As rightly pointed out on behalf of the appellants that the authorities below rather than ascertaining the factual position, have disposed of the matter in a casual manner. When the specific defence was raised by the assessee about the absence of facility to manufacture the particular item in their factory, one fails to understand as to how the said assessee could have been held to have failed to produce any documentary evidence and as such, the absence of machinery could have been established by documentary evidence. Certainly, the same could verify the fact by necessary inspection as well as by requiring the party to produce the evidence in the form of testimony of the chartered engineer who can certify as to whether the facility regarding manufacture of particular item was available in the factory of the appellants or not. No such efforts appear to have been made in the matter and merely to record of absence of documentary evidence regarding non-availability of the facility to manufacture glass cartridge in the appellants' unit, the demand has been confirmed. Certainly, in the facts and circumstances of the case in which the demand has been confirmed, the same cannot be sustained and is liable to be set aside and the matter remanded back to the adjudicating authority to deal with the defence sought in the matter in accordance with the provisions of law, bearing in mind the observations made as above.

5. The appeal accordingly, stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/