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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/49 /2011 - EX|DB| &S/60/2011 & E/M/12/2011-EX Date **12/01/2011**

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

To .
M/S SHIVA TEXFABS LTD. (UNIT-II)
VILL. BHATTIAN, MACHHIWARA-KOHRA ROAD.
TEHSIL SAMRALA,
DISTT. LUDHIANA.

M/S SHIVA TEXFABS LTD. (UNIT-II) Appellant

Vs

C.C.E. CHANDIGARH Respondent

MISC ORDER NO.3[illegible]/2011-EX
STAY ORDER NO.43/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.** 15/ **2011** **EX|DB|** dated 12-1-11

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.SUDHIR MALHOTRA
13-R, HUKAM CHAND COLONY,
NEAR D.A.V COLLEGE,
3. C.D.R
4. Bar association, CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Misc. No. 12 of 2011, Excise Stay No. 60 ~~to~~/ 2011 in Appeal No. 49 of 2011

(Arising out of Order-in-Original No.VIII(Law)Hqrs./Chd-II/Shivatex fab/35/2010/923 dated 30.12.2010 passed by the Commissioner, Central Excise, Chandigarh)

Shiva Texfab Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance

Appeared for Appellant : Shri S. Malhotra, Advocate

Appeared for Respondent: Shri B.K. Singh, Jt. CDR

Date of Hearing: 10 & 11.1.2011

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

Misc Order No. 37/2011-EX dated............
STAY Order No 43/2011-EX
FINAL Order No. 15/2011-EX

Per D.N. Panda :

Ld. Counsel mentioned in the morning yesterday for expeditious disposal of the stay application. We called the record for hearing in the second half of the Court time. The record reveals that the appellant has come against the order dated 30.12.10 (appearing at page-39) where the authority has communicated to him that provisional assessment cannot be allowed in the facts and circumstances of the case. The appellant was also advised to pay duty either under protest or without protest as the appellant deemed fit. It was further informed to the appellant that clearance of goods without payment of duty shall be liable to seizure under law. Ld. Counsel submits that not only this communication has been issued to him but also there has been certain seizure done in due course. He further placed page 81 of the appeal folder demonstrating that a Show Cause Notice dated 6.5.10 has been issued to the appellant to decide certain disputes. During pendency of the adjudication, the impugned order dated 30.12.10 which is appearing at page-39 of the appeal folder has been issued. He placed reliance on the judgment of Tribunal in the case of **Bhagwati Gases Ltd. Vs. CCE, Jaipur-I** reported in 2008 (85) RLT 153 (CESTAT.-Del.) to submit that Tribunal has interfered against an order passed causing hardship to assessee even though adjudication order was not passed. On all these grounds, he prays that this appellant is prepared to cooperate to the department for earliest adjudication of the matter which has been initiated by Show Cause Notice dated 6.5.10 and till the adjudication is completed neither department should insist for provisional assessment nor shall go on making seizure of the goods.

2. Today, Ld. DR, on the other hand submits that the appellant may go for provisional assessment and pay the duties. Getting instructions from field formation, he advises us today that department is prepared to proceed with the adjudication and writ petition in WP(1)5454/2010 being pending before the Hon'ble High Court of Delhi, Department shall be governed by the result of writ petition.

3. Ld. Counsel earnestly prays today that the goods under seizure may be released so that there shall not be any undue hardship to the appellant to carry on business and department may expeditiously complete the adjudication to remove further hardship. He also agrees that in view of the order passed by the Hon'ble High Court, the appellant shall be governed by the result of the writ petition. But he is apprehensive that his client may face still difficulties for the period that has already expired after issuance of the show cause notice and also for the future clearance. We are not at all satisfied about the apprehension of the appellant since we expect that the public servant will act in all fairness under the law. However, to serve the interest of justice, we may say that in respect of the period already expired after issuance of the Show Cause Notice, if the authorities are satisfied that Revenue's interest may be prejudiced, there may not be bar to issue Show Cause Notice for that period unless otherwise barred so that Revenue's interest may be protected. So far as future clearances are concerned, it would not be proper to cause any obstruction to the

assessee by pre-mature orders without expeditious adjudication of the matter resting on the file.

4. Having heard both sides in great length, we do not approve the action of the authority who has proceeded pre-maturely when writ petition is pending before the Hon'ble High Court of Delhi. Revenue is aware that they are respondent in the litigation before the Hon'ble High Court. They were also directed by the Hon'ble High Court to file counter affidavit. It is also coming out from the department that they have acted on the basis of an order under Section 37B issued by the Central Board of Excise and Customs. Once they are aware that the very order is under challenge before the Hon'ble High Court, they should have rather prayed Hon'ble High Court for expeditious disposal of writ application, without resorting to the seizure operation which appears to be unreasonable and without any cogent reason. Unless otherwise warranted under law, seizure without cogent reasons and without proper authority, shall never get approval of the higher Court. Therefore, we direct the goods, if any, seized be released forthwith on execution of proper bond so that Revenue may not be prejudiced.

5. While we were not inclined to interfere to the matter yesterday since Tribunal has already been burdened with huge pendency, exigencies of the present case have compelled us to pay our attention to remove injustice done to the appellant since public confidence appears to have been shaken by high handedness of the

authority by order dated 30.12.2010 during pendency of adjudication. In view of the citation made by the ld. Counsel aforesaid where Tribunal had interfered in such occasion in the past, we are inclined to interfere to pass order in this case. Since we find that the authority in disguise has directed the Additional Commissioner to issue the order without fairly acting on the face of the record, it is high time to complete the adjudication in accordance with law to remove hardship to the assessee. With this, we conclude the matter expressing our dissatisfaction on the action taken by the authorities below and hope that the Authority shall not act contrary to law.

6. With the aforesaid direction, we dispose Misc. application stay application and appeal, finding no further interference desirable at our end on the present matter.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RM