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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/3072/2009 - EX[DB] &E/S/3160/09 Date **20/01/2011**

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

To :
M/S INNOVATIVE TECH PACK LTD.
51, ROZ KA MEO, INDS. AREA, SOHNA, GURGAON.

M/S INNOVATIVE TECH PACK LTD. Appellant

Vs

C.E. DELHI III **STAY ORDER NO.88/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 88/ **2011** **EX[DB]** dated 17-1-11 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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029
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
15. HON'BLE PRESIDENT

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: 17.1.2011

Stay Application No.3160 of 2009 in
Central Excise Appeals Nos.3072 of 2009

Innovative Tech Pack Ltd. ... Appellant/applicant

Vs.

C.C.E., Delhi III .. Respondents

Appearance:

Shri R.K. Hasija, Advocate for the appellants/applicants
Shri V. Chaudhary, 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. 88/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. As we propose to dispose of the appeal itself, the application is allowed without insisting for pre-deposit while directing the registry to place the appeal for final hearing forthwith.

(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: 17.1.2011

Central Excise Appeals Nos.3072 of 2009

Arising out of the order in appeal No.235/MA/GGN/2009 dated 1.9.2009 passed by the Commissioner of Central Excise (Appeals), Delhi III.

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

Innovative Tech Pack Ltd. ... Appellant/applicant

Vs.

C.C.E., Delhi III .. Respondents

Appearance:

Shri R.K. Hasija, Advocate for the appellants/applicants
Shri V. Chaudhary, 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. 88/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

This appeal is being heard in terms of the order passed in Stay Application No.3160 of 2009.

2. This appeal arises from the order dated 1.9.2009 passed by the Commissioner (Appeals), Gurgaon. By the impugned order, the appeal was

dismissed for non-compliance of the requirement of Section 35F of the Central Excise Act, 1944. The Commissioner (Appeals) required the appellants to deposit the entire duty amount and penalty to enable the appellants to pursue the appellate remedy before the lower appellate authority. In fact, the adjudicating authority by order dated 22.10.2008 had confirmed the duty demand of Rs.7,71,285/- and equal amount of penalty. Undisputedly, an amount of Rs.4 lakhs was already deposited by the appellants and they were appropriated by the adjudicating authority.

3. The main issue involved in the matter is as to whether the cost of free packing material supplied by the buyers to the appellants would form part of transaction value or not. The appellants had been placing reliance in the order passed by the authority in the appellant's own case reported in 2001 (136) ELT 1025. The fact however remains that the said decision related to the period prior to July 2000 whereas the period involved in the present matter is for subsequent period. Undoubtedly, this difference will have to be taken into consideration while deciding the issue by the lower authority.

4. In the facts and circumstances of case,. however, we find that in order to enable the appellants to pursue lower appellate remedy, it would suffice to direct the appellants to deposit a further sum of Rs.2,00,000/- (rupees two lakhs) within a period of eight weeks from today and upon such deposit, liberty to appellants to contest the appeal before the Commissioner (Appeals).

5. Without going into the merits of the case, therefore, the appeal is allowed and the impugned order is set aside. The appellants are directed to deposit a further sum of Rs.2,00,000/- (rupees two lakhs) within a period of eight weeks . On deposit of the said amount, the Commissioner (Appeals) shall hear the appeal filed by the appellants on merits and shall pass an order in accordance with the provisions of law. Needless to say that in case of failure on the part of the appellants to deposit a sum of Rs.2 lakhs within

eight weeks , the order passed today shall automatically stand recalled and the appeal would stand dismissed and the order passed by the Commissioner (Appeals) shall stand confirmed. With these observations, the appeal is disposed of

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/