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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/1596/2010 - EX[DB] E/STAY/1590/2010-EX[DB] Date **02/02/2011**

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

To :
M/S. AMBUJA CEMENTS LTD. (UNIT- DARLAGHAT)
ELEGANT BUSINESS PARK, MIDC CROSS ROAD,
ANDHERI-KURLA ROAD, ANDHERI-(EAST),
MUMBAI.
400059

M/S. AMBUJA CEMENTS LTD. (UNIT- DARLAGHAT) Appellant

Vs

C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 143/2011 S.0.161/11 EX[DB]** dated 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 Shri B.L. Narasimhan, Adv,
   B-6/10, Safdarjung Enclave,
   New Delhi
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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 13.01.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, 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 should 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 Departmental authorities?	Yes

Excise Appeal No. 1596 of 2010
[Arising out of order in appeal No.48/CEX/Chandi/2010 dated 16.03.2010 passed by the Commissioner Central Excise (Appeals), Chandigarh].

M/s Ambuja Cements Limited — Appellants
[Rep. by Shri B.L. Narasimhan, Advocate]

Vs.

CCE, Chandigarh — Respondent
[Rep. by Shri S.K. Panda, Jt. CDR]

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

FINAL ORAL ORDER NO. 143/2011-EX

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

This application is heard in terms of order passed today in Excise Stay Application No. 1590 of 2010. The appeal arises from order dated 05.03.2010 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the appeal has been disposed of for non-compliance of the requirement of pre-deposit under Section 35F of the Central Excise Act, 1944.

2. Few facts relevant for the decision are that the appellants are engaged in manufacture of Cement and Clinker classifiable under Chapter 25 of the Central Excise Tariff Act, 1985. By order dated 29.12.2008, the appellants were required to pay sum of Rs. 20,93,783/- as the cenvat credit to that extent was refused to the appellants. Simultaneously, the appellants were liable to pay interest and equal amount of penalty. Being aggrieved, the appellants filed appeal before the Commissioner (Appeals), Chandigarh, alongwith application for stay. While disposing the application for stay the Commissioner (Appeals) directed the appellants to deposit the amount demanded under the order passed by the adjudicating authority as well as penalty payable thereunder within the specified period. The appellants without paying the said amount in terms of the order filed application for modification of the said order. Meanwhile, appellants had deposited an amount of Rs. 8,23,379/- even before the issuance of the order passed by the adjudicating authority during the pendency of the proceedings before the adjudicating authority. Consequently, the appellants were liable to pay an amount of Rs. 12,67,404/- besides penalty amount in order to enable them to pursue the appellate proceedings. The application for modification of the stay order however, was rejected and the appellants were directed to comply with the order regarding the pre-deposit within ten days. Appellants however failed to comply with the same. Consequently, the impugned order came to be passed.

3. Though, the department has sought to justify the order by referring to the decision of the Apex Court in the case of **Usha Udyog** vs. **CESTAT** reported in 2003 (156) ELT 201 (Del.) and **Vijay Prakash D. Mehta** vs. **Collector of Customs** reported in 1989 (39) ELT 178 (SC), the fact remains that the impugned order has been passed merely on the ground of failure on the part of the appellants to comply with the requirement of Section 35F of the said Act, without giving prior opportunity to the appellants to satisfy as to why the appeal should not be dismissed inspite of non-compliance of Section 35F of the Act. It is a matter of record that appellants had filed an application for modification of the order regarding the pre-deposit. It is also clear from the record that the stay application was dismissed and further ten days time was granted to comply with the requirement of pre-deposit. However, thereafter, without issuing any notice for hearing on the point of dismissal of the appeal on the ground of non-compliance of order for pre-deposit, the impugned order came to be passed. It is already settled by the decisions of the Tribunal that mere failure to comply with the requirement of Section 35F of the said Act by itself cannot be a ground to dismiss the appeal unless the appellants are given opportunity of being heard on the point as to why the appeal should not be dismissed for non compliance of the said requirement. The decision of the Tribunal is based on various other decisions including the decision of the Apex Court and High Courts. On this ground itself the impugned order is liable to be set-aside.

4. Taking into consideration the facts and circumstances, it would be appropriate to allow the appellants to deposit the balance amount claimed under the impugned order excluding the interest amount and the penalty amount to enable the appellants to contest the proceedings. Hence, the appellants shall deposit the amount demanded under the impugned order that is balance amount of Rs. 1267404/- within a period of six weeks from today and on deposit thereof the Commissioner (Appeals) shall hear the appellants on merits of the case. While setting aside the impugned order, the appeal stands disposed of. The appeal is accordingly allowed in the above terms

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 13.01.2011

Excise Stay Application No. 1590 of 2010 in
Excise Appeal No. 1596 of 2010

M/s Ambuja Cements Limited — Appellants
[Rep. by Shri B.L. Narasimhan, Advocate]

Vs.

CCE, Chandigarh — Respondent
[Rep. by Shri S.K. Panda, Jt. CDR]

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Mathew John, Member (Technical)

STAY ORAL ORDER NO. 161 / 2011-EX.

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

Heard the learned Advocate for the appellants and Jt. CDR for the respondent.

2. Since we propose to dispose of the appeal itself the application is allowed without insisting for any deposit with direction to the registry to place the appeal for hearing forthwith. Application stands disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant