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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 24/02/2011

Appeal No. E/1934/2009 - EX[DB] WITH E/S/1989/2009-EX

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

To :
JINDAL DRUGS LTD
PLOT NO 1, EXTENSION-III, INDUSTRIAL
AREA,GANGYAL, JAMMU (J&K)

Appellant

Vs

Respondent

JINDAL DRUGS LTD

C.C.E. JAMMU

STAY ORDER NO.286/2011-EX

I am directed to transmit herewith a certified copy of **Final order No. 203/ 2011 EX[DB] dated 14-2-11**
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. JAMMU
OB-32, RAIL HEAD COMPLEX,
JAMMU - 180012.
2. Adv. / Consult
MR.PDS LEGAL,ADVOCATE
31, MAKER CHAMBERS VI, NARIMAN
POINT, MUMBAI
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 Delh
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 Regi
(Excise Appeal Bra

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI.

Excise Stay Application No.1989 of 2009
In Appeal No.E/1934 of 2009

Jindal Drugs Ltd. ...Appellant

Vs.

CCE, Jammu ...Respondent

Appearance: Rep.by Shri Ravi Raghavan, Proxy Counsel for the appellant.
Rep. by Shri R.K. Verma, DR for the respondent.

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

STAY Order No.286/2011-EX Dated: 14.02.2011

Per Justice R.M.S. Khandeparkar:

In view of the willingness expressed to deposit the amount, which was directed to be deposited by the Commissioner (Appeals), we dispose of this application without insisting for any further amount and direct the Registry to place the appeal itself for final disposal forthwith.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI.

Date of Hearing: **14.02.2011**

Date of decision: **14.02.2011**

For approval and signature:
Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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 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?	Y

Excise Appeal No.E/1934 of 2009-Excise

[Arising out of Order-in-Appeal No.257/CE/AC/J/R/07 dated 13.03.2009 passed by the Commissioner of Central Excise (Appeals), Jalandhar].

M/s. Jindal Drugs Ltd. ....Appellants

Vs.

CCE, Jammu ...Respondent

Appearance:

Rep. by Shri Ravi Raghavan, Proxy Counsel for the appellants.
Rep. by Shri R.K. Verma, DR for the respondent.

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

Final Order No. 283/2011-EX/Dated:14.02.2011

Per Justice R.M.S. Khandeparkar:

Heard ld. Advocate for the appellants and DR for the respondent.

2. This appeal arises from the order dated 13.03.2009 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the appeal filed by the appellants against the order of the adjudicating authority has been dismissed for non-compliance of the provisions of Section 35 F of the Central Excise Act.

3. The adjudicating authority by its order dated 13.2.2008 had rejected the claim for refund of Rs.7,94,221/-, which was claimed by the appellants on account of payment of education cess through PLA being not admissible and, therefore, had directed the appellants to reverse the said amount within 5 days of receipt of the copy of the order. The appellants being aggrieved had filed appeal against the same before the Commissioner (Appeals). However, the appellants did not comply with the requirements of Section 35 F of the said Act. Hence, the appeal was dismissed.

4. Ld. Advocate for the appellants submitted that the appellants would comply with the requirements of Section 35 F of the said Act in terms of the order in that regard passed by the Commissioner (Appeals) within a period of 8 weeks from today if an opportunity in that regard is given to the appellants and on being so complied with the said provisions of Section 35 F of the Act, the appellants be permitted to argue the matter on merits before the Commissioner (Appeals).

5. Perusal of the impugned order apparently discloses that the appeal has been dismissed solely on the ground of non-compliance of Section 35 F of the said Act. The impugned order, however, does not disclose any opportunity having been given to the appellants to satisfy the Commissioner (Appeals) as to why the appeal should not be dismissed on the ground of non-compliance of Section 35 F of the Act. Besides, as the appellants have expressed willingness to deposit the required amount in terms of order passed by the Commissioner (Appeals) under Section 35 F of the said Act. In all fairness, we find it appropriate to set aside the impugned order and give an opportunity to the appellants to comply with the requirements of Section 35 F of the said Act by depositing the said amount within eight weeks from to-day and thereupon the Commissioner (Appeals) to give an opportunity to the appellants for being heard in the appeal on merits and to decide the same in accordance with the provisions of law. Hence, the appeal succeeds, the same is allowed and the impugned order is set aside. The

appellants are directed to deposit the required amount in terms of Section 35 F within eight weeks from to-day. On such deposit being made, the Commissioner (Appeals) shall hear the appellants on merits of the case and shall decide the appeal in accordance with the provisions of law. Needless to say that the present order has been passed subject to compliance of the provisions of Section 35 F of the said Act by the appellants, as stated above, failing which the order passed today shall automatically stand revoked and the appeal shall stand dismissed. The Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.