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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/6207/2004,40 /2005 - EX[DB]    Date **24/02/2011**

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

To :
M/S NARINDRA HERD BOARD INDUS.PVT.LTD.
NASRALA DISTT.HOSHIARPUR

**M/S NARINDRA HERD BOARD INDUS.PVT.LTD.**    Appellant

Vs

**C.C.E. JALANDHAR**    Respondent

I am directed to transmit herewith a certified copy of **Final order No. 236-237/ 2011 EX|DB|** dated 17-2-11 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, JALANDHAR** + VICE-VERSA)

2. Adv. / Consult
**MR.SUDHIR MALHOTRA**
13-R, HUKAM CHAND COLONY, NEAR
D.A.V COLLEGE, JALANDHAR

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)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING : 17/02/2011.**
**DATE OF DECISION : 17/02/2011.**

**Excise Appeal No. 6207 of 2004 and 40 of 2005**

[Arising out of the Order-in-Appeal No. 471/CE/APPL/JAL/2004 dated 30/09/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : Yes |
| 3. | Whether their Lordships wish to see the fair copy of the order? | : Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | : Yes |

M/s Narindra Hard Board Indus. Pvt. Ltd. — Appellants

Versus

CCE, Jalandhar — Respondent

and vice-versa

**Appearance**

Shri Sudhir Malhotra, Advocate – for the Appellants.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

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

FINAL Order No. 236/2011-EX Dated : ____________
FINAL Order No 237/2011-EX

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

Since common question of law and facts arise in both the appeals, they were heard together and are being disposed of by this common order. The order under challenge is order dated 30th of September 2004 passed by the Commissioner (Appeals). To the extent the assessee is aggrieved by the said order, they have referred the appeal against the same, whereas to the extent, the department is aggrieved by the impugned order, the department has come in appeal.

2. Before going into the rival contentions in relation to the merits of the case, it is, however, necessary to address the issue of failure on the part of the Commissioner (Appeals) to comply with the basic principles of natural justice sought to be raised by the assessee.

3. The impugned order discloses that the Adjudicating Authority had passed the order in favour of the assessee, which was sought to be challenged by the department before the Commissioner (Appeals). The impugned order records that the notice to the appellants who were the respondents before the Commissioner (Appeals) was returned undelivered with the remarks that "the factory closed and send back" and that, therefore, notice was admittedly served upon the assessee by

way of substituted service. However, as regards the substituted service, the observations in the impugned order read thus:-

> "the notice was then served upon the respondent under "Panchnama" dated 5/2/04 with a copy of hearing notice displayed at the notice board of the headquarters at Chandigarh".

In view of the said observations in the impugned order and the specific contention sought to be canvassed on behalf of the assessee that they had no knowledge of any such notice being served, the department under order dated 9th of December 2010 was directed to place on record the materials which would disclose service of the notice to the assessees in relation to the appeal filed before the Commissioner (Appeals). Pursuant to the said direction, the DR today has placed on record Xerox copy of the Panchnama dated 5th of February 2004 and the letter of the Superintendent confirming the delivery of notice of the personal hearing to the assessee being dated 9th of February 2004.

4. Perusal of the Panchnama discloses that the departmental representative alongwith Panchas had visited the factory premises on 5th of February 2004 at about 4 p.m. and since the factory was found closed, the letter of the personal hearing was pasted on the main entrance gate of the factory. It is not in dispute, and in fact, it is recorded in the Panchnama itself that the hearing of the case was fixed on 6th of February 2004 at 11.30 hrs. In other words, the notice about hearing of the appeal

fixed on 6th of February 2004 at 11.30 hrs. was sought to be served by way of substituted service by pasting the notice on the entrance door of the gate of the factory of the appellants which was already closed. In spite of the above facts, the Commissioner (Appeals) proceeded to dispose of the appeal holding that the appellants did not bother to appear before him for personal hearing in spite of service of notice.

5. It is settled law that proceedings before any judicial or quasi-judicial authority cannot be disposed of without giving fair opportunity of being heard to the litigating parties. The fair opportunity of being heard would definitely include requirement of service of notice giving reasonable period of time between the service of notice and the date of hearing to enable the concerned party to prepare for the hearing of the matter.

6. In the case in hand, it is apparent that the notice of hearing of the matter was not served upon the assessee till 4th of February 2004. The same was attempted to be served by pasting the notice on the door of the closed premises of the factory, however, the act of pasting of the notice was done only around 4 p.m. of 5th of February 2004 in spite of the fact that the hearing was to take place on 6th of February 2004 at 11.30 a.m. In such circumstances, it can hardly be said that there was sufficient opportunity given to the assessee to know about the fact the matter was fixed for hearing on 6th of February 2004. Premises having been closed, it was to the knowledge of the serving

officers as well as to the Commissioner (Appeals) that there could be no sufficient opportunity to the assessees to know about the contents of the notice pasted on the door. The hearing having been fixed on the very next day, it cannot be said that there was sufficient opportunity given to the assessee to know the contents of the notice pasted on the door of the premises previous evening of the date of hearing.

7. Considering the above noted facts, we find that the assessee is justified in contending about failure of the basic principle of natural justice while disposing the appeal by the Commissioner (Appeals). On this ground alone the impugned order is liable to be set aside and matter remanded to the Commissioner (Appeals) to be heard afresh and to decide the same in accordance with provisions of law. We make it clear we are not expressed any opinion on the merits of the case.

8. In the result, appeal filed by the assessee succeeds, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide the appeal afresh. Consequently, the appeal filed by the department also stand disposed of. Considering the fact that the appeal before the Commissioner (Appeals) relates to the year 2002, the authority are expected to dispose of the appeal expeditiously and the parties are expected to cooperate with the authority in that regard. The party should appear before Commissioner (Appeals), Chandigarh – II on **14th March 2011** at 11.30 hrs. for further

proceedings in the matter. The Commissioner (Appeals) shall dispose of the appeal after hearing the parties on or before **30th August 2011**.

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK