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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/1823/2010 - EX[DB] WITH E/S/1814/2010-EX Date **06/04/2011**

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

To :
M/S CONCRETE LOGICAL,
WH-51, MAYAPURI INDUSTRIAL AREA, PHASE-I,
NEW DELHI.

**M/S CONCRETE LOGICAL,** Appellant

Vs

**C.E. DELHI II** **STAY ORDER NO. 422/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.326 2011 EX[DB]** dated 21-3-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registra
(Excise Appeal Branc

**Copy to :**

1. Respondent
**C.C.E. DELHI II**
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult SH. B.L. NARASIMHAN, ADV,
B-6/10, S.J. ENCLAVE,
N. DELHI - 29

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 Registr
(Excise Appeal Branc

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 21.03.2011

**Excise Stay No. 1814 of 2010 in Excise Appeal No. 1823 of 2010**

M/s Concrete Logical — Appellants

Vs.

CCE, Delhi-II — Respondent

Appearance:
Rep. by Sh. B.L. Narasimhan & Sh. Hemant Bajaj, Advocates for the appellants.
Rep. by Sh. I. Baig, DR for the respondent.

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

STAY ORAL ORDER NO. 422/2011-CX

**Per: Hon'ble Shri Justice R.M.S. Khandeparkar:**

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

2. As we propose to dispose of the appeal itself, the application is allowed without insisting for any pre-deposit with direction to the Registry to place the appeal for final hearing forthwith for disposal. Application stands disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 21.03.2011

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. 1823 of 2010**

M/s Concrete Logical Appellants

Vs.

CCE, Delhi-II Respondent

Appearance:
Rep. by Sh. B.L. Narasimhan & Sh. Hemant Bajaj, Advocates for the appellants.
Rep. by Sh. I. Baig, DR for the respondent.

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

FINAL ORAL ORDER NO. 326 / 2011-EX

**Per: Hon'ble Shri Justice R.M.S. Khandeparkar:**

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

2. This appeal is being disposed of in terms of order passed today in Excise Stay Application No. 1814 of 2010.

3. This appeal arises from order dated 29.03.2010 passed by the Commissioner, New Delhi. By the impugned order, the Commissioner has confirmed the duty to the tune of Rs.65,56,317/- alongwith interest and equal amount of penalty.

4. The appellants are engaged in manufacture of vibrators and converters classifiable under heading 8467 and 8479 of the schedule to the Central Excise Act, 1985. The appellants are also engaged in trading of similar items.

5. In the course of scrutiny of the records, the department observed that the traded material was also bearing brand name 'Accentrix brand' of the appellants. The investigation was initiated and in the process the appellants ~~was~~ were asked whether the traded goods were also affixed with the brand name to which the appellants answered in negative. However, as the department noticed that some of the items under the brand name were disposed of as the traded items though they were manufactured by the appellants, a show cause notice dated 30.03.2009 came to be issued. The same was sought to be contested by the appellants. However, the Commissioner after taking into consideration the statement of the appellants and observing that the department had nowhere mentioned the fact of the affixing of brand name on the imported goods amounted to manufacture, rejected the contentions sought to be raised on behalf of the appellants and confirmed the demand as above.

6. Taking into consideration various grounds sought to be raised on behalf of the appellants as well as the contention sought to be raised by either of the parties and on perusal of the records in particular with the reply to the show cause notice, it is apparent that the main allegation against the appellants was that even though the appellants had contended that no brand name was affixed on the traded goods, the records disclose to the contrary which lead to the inference that even the manufactured product were disposed of as traded goods and thereby the appellants evaded the payment of duty. Based on such inference and even in the absence of proper evidence regarding the manufacture of such goods by the appellants and without ascertaining as to whether the respondent had sufficient evidence in support of the claim that the traded goods were not manufactured goods, the Commissioner proceeded to confirm the demand against the appellants.

7. Para 4 of the reply to the show cause notice reads as under:-

> "4. Besides manufacturing as stated above, the noticee is also engaged in import and trading of the aforesaid goods viz immersion concrete vibrator and electrical voltage converters and parts thereof from the premises located at 215, Vishwadeep Tower, District Centre, Janakpuri, New Delhi. The imported goods are assessed by the proper officer of customs and thereafter cleared from the customs on payment of customs duty. Thereafter the same are brought to the said premises where they are kept for further sale. If necessary, the noticee affixes the label bearing his brand name 'Accentrix' thereon and later sells the same to the buyers under trading invoices. The imported goods are never brought to the registered manufactory of the noticee".

8. The stand taken in response to the show cause notice as above clearly discloses that though initially the appellants might have stated that traded goods were not bearing the brand name, the reply to the show cause notice disclose the circumstances in which such traded goods were affixed with the brand name. Obviously, in such circumstances, it was necessary to ascertain

whether the appellants were having ~~with~~ necessary material in support of their contention that the goods in question were really traded goods unconnected with the manufacturing activity. Simultaneously, it was necessary for the department to place on record the material in support of their contention that those goods were actually manufactured goods. In the absence of such exercise being done, it was not open for the Commissioner to proceed to impose duty demand against the appellants. On this ground itself, the impugned order is not sustainable and is liable to be set aside and matter remanded for denovo enquiry bearing in mind the above observations. Accordingly, the appeal succeeds; the impugned order is set aside. Matter is remanded for denovo enquiry.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant