TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/728 /2010- EX[DB]

Date 07/06/2011

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

To :
SH. SUBHAS ATRI,
R/O VILLAGE KHAJPUR, GAUTAM BUDH NAGAR
(U.P.)

SH. SUBHAS ATRI, Appellant

Vs

C.C.E. GHAZIABAD **STAY ORDER NO. 614/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.457/ 2011 EX[DB]** dated 26-5-11 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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

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

Date of Hearing: 20.05.2011

Excise Stay Appn. No.E/S/759/2010 in
Excise Appeal No. E/728/2010

[Arising out of Order-in-Original No.58/Comm/GZH/2009 dated 24.12.09 passed by Commissioner of Central Excise, Ghaziabad].

Subhash Atri ...Appellant

Vs.

CCE, Ghaziabad ... Respondent

Present for the Appellant : Shri Rajesh Chhibber, Advocate
Present for the Respondent : Shri N. Anand, DR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

STAY **ORDER NO.** 614/2011-EX **DATED: 20.05.2011**
FINAL Order No. 457/2011-EX

PER: D.N.PANDA

Although this stay application was fixed for hearing today, we found that this matter has been rolling on the board from 2.7.2010 for some reason or other. At the first instance on 2.7.10 none being present, the matter was dismissed. There after the appellant came forward for restoring the appeal on 25.10.10. When the matter again came on 21.3.11, there was mentioning before Court No.1 that the company M/s. Qualimax Electronic Pvt. Ltd. who faced the adjudication in terms of order dated 24.12.2009 vide order-in-original No.58 has deposited the duty. The Court directed for evidence to be brought to record. But nothing came forward to record even today.

2. Ld. Counsel Shri Chhibber, appearing for the appellant submits that this appellant is unable to find the evidence of deposit made by the Company as aforesaid. But the Company was before Settlement Commission. Being unsuccessful thereat, proceeded to Hon'ble High Court of Delhi and also was unsuccessful there. He further submitted that in the reported decision in 2010 (257) ELT 42 (Delhi), it appears that the company had made some deposit as revealed from para 8 of the decision.

According to Shri Chhibber, present appellant was not contributory to the evasion made by company. The appellant is a very small employee and rather in his reply to show cause notice filed on 17th December, 2009, he clearly brought out that he was only acting under the instruction of his employer and there was a design by the employer to cause evasion. Appellant being an innocent has come out with clean hands stating that after raid was done to the company's factory, the employer has terminated services of the appellant and also his dues were not settled by that company, despite several requests. His struggle is very well explained to the authorities in the reply to show cause notice. But the authorities in paragraph 4.35 held that the appellant is liable to penalty under rule 26 of the Central Excise Rules 2002. Charge in that paragraph is that the appellant was in-charge of production report and he has admitted in his statement dated 24.7.08 about the receipt of raw-material and invoicing of the goods. The statement disclosed what was the duty discharged by the appellant. He did his duty for earning his bread as low paid employee and only carrying out direction of his employer. He had no malafide to cause evasion to Revenue nor intended to do so for no wilful intent to cause evasion. Penalty of unreasonable amount of Rs.5 Lakhs was unwarranted since gravity of the matter is not serious in so far as the appellant is concerned and no charges were at all levelled, bringing the appellant to his conscious knowledge to cause evasion. Not only the stay application may be disposed calling for no pre-deposit but also the appeal may be disposed to serve interest of justice.

3. On the other hand, ld. DR points out that clear admission of the appellant brought him to charges. When the appellant was in-charge of the production, he was aware how the evasion has occurred. That is demonstrated from para 4.35 of

the order. Therefore, the stay application should be dismissed as well as the appeal be dismissed.

4. After giving a patient hearing to ascertain the gravity of the matter, we are not inclined merely to dispose the stay application and keep the appeal pending. Therefore, we dispose the appeal dispensing pre-deposit. Ld. Counsel's averment about the status of the employee appellant, his involvement and his entire statement like an approver is clear from page 59 carrying the reply to show cause notice available in appeal folder. Reply of the appellant demonstrates that he has identified his employer and his conduct. He has come forward to state about the modus operandi followed by his employer and the manner how evasion was made. It appears that the appellant has come out with clean hand to speak truth without suppression of fact. This can also be appreciated from paragraph 4.35 where even the adjudicating authority has recorded that the Report maintained by the appellant was handed over to one Shri Mohit Gupta. Even the daily cash expenses report maintained by him was handed over to the same person. This clearly shows that nothing was in the hands of this appellant to be a conscious contributor to the evasion. We are also able to say so looking to para 3.98 page 29 of the adjudication order. The authority has not at all considered truthfulness of the reply given by the appellant in show cause

notice looking to the magnitude of offence committed. It is only recorded that the appellant submitted reply wherein he stated that he had no role in this case. Such an insufficient recording fails to bring aforesaid mitigating factors.

5. Making an over all assessment of the issue, we are satisfied that this appellant has no deliberate intention to cause evasion but has acted under the instruction of his employer, who became finally unsuccessful before the Hon'ble High Court in the reported decision aforesaid. Looking to the role of the appellant and for no gravious commitment of the offence made by him we consider that reducing the penalty to Rs.50,000/- shall serve interest of justice. We order accordingly. Appeal is allowed granting partial relief to the extent indicated above.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

Anita