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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/2218/2005,2421/2005,2557/2005,2815/2005 - EX[DB]   Date **10/06/2011**

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

To :
M/S JAIPARKASH HYUNDAI CONSORTIUM
JA HOUSE,63 BASANT LOK VASANT VIHAR NEW
DELHI
110057

M/S JAIPARKASH HYUNDAI CONSORTIUM Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.460-463/ 2011 EX[DB]** dated 2-6-11 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.PATRI & CO
11-D,DDA MIG FLATS,SARAI JULLAINA,N 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. 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

Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2

14. M/S CONTINENTAL FOUNDATIONS JOINT VENTURE
CONTINENTAL HOUSE, 28, NEHRU PLACE, NEW DELHI

15. M/S SATULJ JAL VIDYUT NIGAM
C/O RUPESH KUMAR, 46, BANK ENCLAVE, N DELHI.

16. NATPHA JHAKRI JOINT VENTURE
A-137, DEFENCE COLONY, NEW DELHI

17. MR. KHAITAN & CO.
12TH FLOOR ASHOKA ESTATE
24, BARAKHAMBA ROAD, CONNAUGHT
PLACE, N. DELHI

18. MR. RUPESH KUMAR, ADV.,
46, BANK ENCLAVE,
N. DELHI-

19. MR. R. SUDHINDER, ADV.,
C-179, BASEMENT,
DAYANAND COLONY,
LAJPAT NAGAR-IV,
N. DELHI-24

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

COURT NO. II

E/ **Appeal No.2218, 2421, 2557 & 2815 of 2005**

[All arising out of Order-in-Original No. 06/CE/2005 dated 18.2.2005 passed by the Commissioner of Central Excise,Chandigarh-I, Chandigarh].

Date of Hearing: 10th May, 2011
Date of Decision: 10th May, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judiciall Member;
Hon'ble Shri Mathew John, Technical Member

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?	No

M/s. Jaiprakash Hyundai Conssortum,
M/s. Naptha Jhakri Joint Venture,
M/s. Continental Foundation Joint Venture,
M/s. Satluj Jal Vidyut Nigam — Appellants

Vs.

CCE, Chandigarh — Respondent

Present for the Appellant :Shri A. Hidayatullah, Sr. Advocate, & Shri P.K. Ram, Shri R. Sudhinder, Shri Rupesh Kumar,Advocates

Present for the Respondent :Shri I Beig, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. 460 - 463/2011 - EX

Per D.N. Panda:

The appellants M/s. Jaiprakash Hyundai Consortium in appeal No. 2218/05, the appellants M/s. Naptha Jhakri Joint Venture in appeal No. 2421/05, and the appellants M/s. Continental Foundation Joint Venture in appeal No. 2557/05 were before the Tribunal earlier in appeal case No. 2558/2000-C, 2641/2000-C and 2631/2000-C respectively. Along with them the appellants M/s. Naptha Jhakri Joint Venture recognised by its new name M/s. Satluj Jal Vidyut Nigam which is in appeal No. 2815/2005 before Tribunal was also in appeal earlier before Tribunal in appeal No. 2692/2000-C.

2. In the present bunch of apepals there were two disputes before the Tribunal earlier as is apparent from para 17 at page 20 of the order of Tribunal on 21st February, 2002 issued vide Final Order No. 22-23/2002-C. Conclusion of the Tribunal was that there shall not be levy of duty prior to 1.9.1997 on "Ready Mix Concrete" (RMC for short) but such levy shall be imposable thereafter subject to grant of Modvat credit, if any available upon examination of evidence. On this count, matter was remanded to the adjudicating authority for de-novo adjudication.

3. While de-novo adjudication as said above was pending, the first three appellants aforesaid moved to the Apex Court in Civil Appeals registered as C.A. No. 3139/2002, 3504/2002 and 3336/2002. Such appeals were decided on 29.8.2007 as reported in 2007 (216) ELT 171 (SC). Apex Court decided the issue on

limitation as is apparent from para 4 of the judgement followed by the decision in para 14 on the background of para 10,11 & 12 of the judgment.

4. Before Apex judgment came up, denovo adjudication order was passed on 18.2.2005 giving rise to the present appeals Nos. 2218/2005 in respect of M/s. Jaiprakash Hyundai Conssortum, 2421/2005, in respect of Naptha Jhakri Joint Venture, 2557/2005 in respect of M/s. Continental Foundation Joint Venture, and 2815/2005 in respect of M/s. Satluj Jal Vidyut Nigam.

5. It may be stated that although M/s. Naptha Jhyakri Joint Venture was before the Tribunal in appeal case No. 2641/2000 and was subjected to common order dated 21.2.2002 passed by Tribunal, it went in different Civil Appeal registered as 7044/2002 before Apex Court. The appeal of that concern was decided by an order dated 17.9.2008 of Apex Court following the decision in the case of M/s. Continental Foundation Joint Venture vs. CCE, Chandigarh-I, reported in 2007 (216) ELT 177.

6. With the aforesaid background the appellants represented by learned Counsels putforth their argument through Shri A. Hidayatullah, Sr. Advocate submitting that in view of the judgement of the Apex Court the dispute on limitation has resolved in so far as the controversy after 1.3.1997 is concerned. Because Tribunal held that there shall be levy after 1.3.1997 on RMC they were aggrieved by such decision and carried the matter to the Hon'ble Supreme Court. Such a dispute is reflected by para 4 of the judgement. Upon examination of the confusion and Circular dated 6.1.98 the

Hon'ble Court came to the conclusion that there was no presence of elements endangering the interest of Revenue for which proviso to Section 11A of Central Excise Act, 1944, was not invokable. Accordingly, in para 13 of the judgement, the Hon'ble Court held that adjudicating authority was not justified in raising the demand and CESTAT was not justified in dismissing the appeal on that count. On the ground of adjudication made beyond the normal period of limitation, the Civil appeals were allowed.

7. Submission of the appellants today is that show cause notice dated 20.1.99 gave rise to these appeals. In the case of Naptha Jhakri Joint Venture, according to the Tribunal, levy was payable for the period 1997-98 and 1998-99. But that became unsustainable in view of the Apex Court judgment holding that the extended period is not invokable. It has been explained that if at all extended period was invokable that was subject to the presence of element causing prejudice to the Revenue but that not being present the extended period beyond 1998-99 does not apply at all. The show cause notice in the case of Napth Jhakri Joint Venture covered the periodis upto April, 1999. It was categorically submitted that there shall be nil rate of duty post 02.06.98 in view of Notification No. 6/98-CE dated 2.6.98. Consequently, there shall be no levy at all. It was submitted that the normal period up to which demand could be issued was up to six months prior to the date of show cause notice issued under section 11A. The show casue notice issued on 20.1.99 could not have demanded duty for the period 1.3.97 to 2.6.98.

8. In so far as M/s. Continental Foundation Joint Venture is concerned it was submitted that when the show cause notice was issued on 20.1.1999 that shall not also be maintainable because during post 2.6.98 there was no levy.

9. So far as Jaiprakash Hyundai Conssortum is concerned it was submitted that the show cause notice was for the period 1993-94 to 1997-98. In absence of levy in the Tariff Entry prior to 1.3.97 show cause notice is unsustainable to impose duty.

10. In so far as levy of penalty in appeal No. 2815/2005 is concerned it is submitted on behalf of the appellants that they were before the Apex Court in Civil appeal No. 3504/2002. That civil appeal arose out of the order passed by the Tribunal in appeal No. 2692/2000-C on 22.1.2002 commonly along with appeal No. 2631, 2661 & 2581/2000. It was specific submission that if there shall be no duty there shall be no penalty.

11. While contention of the appellant are as above, contention of the Revenue is that normal period shall yield duty to the department. We do appreciate contention of Revenue. But in para 1 of the Apex Court judgment it was an undisputed fact that post 02.06.98 Tariff Entry provided rate of duty to be nil. Prayer of the Revenue was to send the matter back for testing normal period of levy. We would have done so if at all there would have been levy in these cases. But we find that the Tribunal granted them relief for the period prior to 1997-98 and if it was undisputed fact that post 02.06.98 tariff entry provided rate of duty to be nil, no useful

purpose would be served if remand of the matter is made for a repetitive exercise.

12. Having heard both sides extensively with averment of both sides recorded as above we are in full agreement with the contentions of the appellants that remanding the matter shall serve no useful purpose when there is no levy prescribed during post 02.06.98 period. The show cause notices issued do not leave scope to understand about the levy for the normal period, if any, in absence of levy post 02.06.98 period. Therefore, it would be futile exercise for the adjudicating authority if we make remand of the matter for limited point of computation of normal period. Accordingly all the four appeals are allowed.

(Pronounced and dictated in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

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