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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/1784/2010 - EX[DB] WITH E/S/1781/2010-EX   Date **15/04/2011**

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

To :
M/S NAHAR INDUSTRIAL ENTERPRISES LTD.
VILLAGE-JALALPUT, P.O.DAPPAR, DISTT. S.A.S.
NAGAR, MOHALI (PUNJAB)

M/S NAHAR INDUSTRIAL ENTERPRISES LTD.   Appellant

Vs

C.C.E. CHANDIGARH   **STAY ORDER NO. 451/2011-EX**   Respondent

I am directed to transmit herewith a certified copy of **Final order No.345/ 2011 EX|DB|** dated 01-4-11 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.DSK LEGAL, ATTORNEY & SOLICITORS
A-62,ARADHANA .SECTOR-XIII, N DELHI.110066

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

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

Date of hearing/decision: 01.04.2011

Excise Stay No. 1781 of 2010 in Excise Appeal No. 1784 of 2010

M/s Nahar Industrial Enterprises Ltd. Appellants

Vs.

CCE, Chandigarh Respondent

Appearance:

Rep. by Sh. Rupinder Singh, Advocate for the appellants.
Rep. by Sh. Nitin Anand, DR for the respondent.

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

STAY ORAL ORDER NO. 451/2011-EX

Per: 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.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 01.04.2011

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?	Y

Excise Appeal No. 1784 of 2010
[Arising out of order in appeal No. 41/CE/Appl/CHD-II/2010 dated 15.02.2010 passed by the Commissioner of Central Excise, Chandigarh].

M/s Nahar Industrial Enterprises Ltd. Appellants

Vs.

CCE, Chandigarh Respondent

Appearance:
Rep. by Sh. Rupinder Singh, Advocate for the appellants.
Rep. by Sh. Nitin Anand, DR for the respondent.

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

FINAL ORAL ORDER NO. 345/2011-EX.

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

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

2. The appellants seeks to challenge the order dated 16.02.2010 passed by the Commissioner (Appeals) Chandigarh. By the impugned order, the appeal filed by the appellants against the order passed by the Additional Commissioner, Mohali has been dismissed.

3. The Additional Commissioner, Mohali by his order dated 01.01.2009 had ordered recovery of Rs. 81,99,415/- on the ground that the same were erroneously granted as rebate of duty in cash. The order was passed in exercise of power under Section 11A of the Central Excise Act, 1944. The Additional Commissioner has also ordered recovery of interest in terms of Section 11AB of the said Act. The said order was passed while confirming the demand in terms of show cause notice dated 20.08.2008.

4. The show cause notice dated 20.08.2008 was issued in relation to sanction orders issued in favour of the appellants during the period from August 2007 to July 2008 as described in the annexure to the said show cause notice.

5. Section 35B (1) of the said Act deals with the subject relating to appeals to the CESTAT. Proviso to the said Section provides that "provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,-

> (a) ....
>
> (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
>
> ...."

6. The provision of law comprised under clause (b) to the said proviso to Section 35B(1) of the said Act clearly provides that when an order is passed by the Commissioner (Appeals) in relation to subject of rebate of duty on excisable goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India, the Tribunal cannot entertain any appeal against ~~in~~ such order of the Commissioner (Appeals) nor will have jurisdiction to deal with any issue relating to rebate.

7. It was sought to be contended on behalf of the appellants that the order sought to be impugned is in fact passed in exercise of power under Section 11A and 11AB of the said Act. However, it is not disputed nor can be disputed that the issue covered by the said order relates to rebate of duty. ~~Being so, merely because~~ Recovery thereof is ordered in exercise of power under Section 11A and interest thereon under Section 11AB, yet the fact remains that the same in relation to rebate of duty. The proviso of Section 35B clearly speaks of exclusion of jurisdiction of this Tribunal in relation to matters relating to rebate of duty. Being so, since the impugned order relates to the issue of rebate, the Tribunal cannot have ~~help for~~ jurisdiction in the matter.

8. In the circumstances, therefore, the appeal is dismissed for want of jurisdiction.

(Justice R.M.S. Khandeparkar)
President

(Mat~~hew John~~)
Member (Technical)

Pant