TELEGRAM : CEGCANAL
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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/3770,3108,3076,3077,3078,3079,3080,3074,3075,3771,3772,3773,3811,3936 /2010- EX[DB] WITH E/S/3591,2888,2847,2848,2849,2850,2851,2845,2846,3592,3593,3594,3628,3794/2010-EX   Date **28/04/2011**

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

To :
M/S GOLDEN TOBACCO LTD.,
FORMERLY KNOWN AS GTC INDUSTRIES LTD.)
TOBACCO HOUSE VILE PARLE (WEST) BOMBAY-56
M/S GOLDEN TOBACCO LTD.,   Appellant

Vs

C.C.E. DELHI I   **STAY ORDER NO.471-483&483-A-EX**   Respondent

I am directed to transmit herewith a certified copy of **Final order No.347-359&359-A /2011 EX[DB]** dated 21-4-11 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. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult SH. L.P. ASTHANA, ADV,
R-163, IIND FLOOR
GREATER KALASH-1, N. DELHI-48

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 (Harvana)
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.
16. THE SECRETARY(REVENUE)
17. THE CHAIRMAN, (C.B.E.C.)
18. MS SUJATA SHIROLKAR, ADV.
171-M POCKET IV, MAYUR VIHAR, PHASE-I,
N. DELHI-91

Assistant Registrar
(Excise Appeal Branch)

P.T.O. 2-3,

19 • M/S ANAND KUMAR DALMIA PROPRIETOR,
M/S KAMADGRI AGENCIS Q/4/3 PADAM APTS. 16/16, CIVIL LINES, KANPUR.

20 • M/S N.V. JOSHI EX. DIRECTOR,
GTC INDUSTRIES LTD., TOBACCO HOUSE, VILE PARLE (WEST) BOMBAY.

21 • M/S RAJESH KUMAR AGARWAL PROPRIETOR,
M/S DELHI MARKETING COMPANY & M/S GORAKHPUR MARKETING CO.
NO. 406, PRABHAT KIRAN (4TH FLOOR) 17-RAJENDRA PLACE, PUSA ROAD,
NEW DELHI.

22 • MR. BABUL[illegible] KABRA PROPRIETOR OF,
M/S KABRA ENTERPRISES 12, SHOPPING CENTRE OLD BUS STAND DURG
(M.P)

23 • ANURAG DALMIA VICE CHAIRMAN,
GOLDEN TOBACCO LTD.,
(FORMERLY KNOWN AS GTC INDUSTRIES LTD.)
8-BD VANDANA BLDG. 11-TOLSTOY MARG. NEW DELHI.

24 • J.P.KHETAN,MANAGING DIRECTOR
GTC INDUSTRIES LTD, TOBACCO HOUSE, VILE PARLE(WEST) BOMBAY.

25 • M/S ABHA DALMIA PROPRIETOR,
M/S DURGESH TRADERS Q/4/3 PADAM APTS. 16/16, CIVIL LINES, KANPUR.

26 • M/S ANIL KUMAR CHAKRABORTY,
C/O 214, SAMACHAR APTS.
MAYUR VIHAR, DELHI

27 • M/S RAJ KUMAR NEGPAL,
GROUND FLOOR 8, BULLION REFINERY BLOG MUMBAI.

28 . S.V. MAKHIJA VICE PRESIDENT-COMMERCIAL.
GOLDEN TOBACCO LTD.,
(FORMERLY KNOWN AS GTC INDUSTRIES LTD.)
TOBACCO HOUSE VILE PARLE (WEST) BOMBAY-56

29 . SANJAY DALMIA CHAIRMAN,
GOLDEN TOBACCO LTD.,
(FORMERLY KNOWN AS GTC INDUSTRIES LTD.)
8-BD VANDANA BLDG. 11-TOLSTOY MARG. NEW DELHI.

30 . M/S BHAVNESH CHADHA PROPRIETOR,
M/S NIRMAL ENTERPRISES, R/O G-27, JAGNPURA EXTENSION NEW DELHI -14

31 . M/S M.P.TOBACCO LTD.
PHULGAO, POTIO ROAD, DURG. (M.P.)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:25.03.2011
Date of Decision: 21/4/2011

In Appeal No.3770 of 2010
With Stay Application No.3591 of 2010

Golden Tobacco Ltd. Appellant

Vs.

CCE, Delhi-I Respondent

In Appeal No.3108 of 2010
With Stay Application No.2888 of 2010

M.P. Tobacco Ltd. Appellant

Vs.

CCE, Delhi-I Respondent

In Appeal No.3076 of 2010
With Stay Application No.2847 of 2010

Shri Rajesh Kumar Aggarwal Appellant

Vs.

CCE, Delhi-I Respondent

In Appeal No.3077 of 2010
With Stay Application No.2848 of 2010

Shri Bhavnesh Chadha Appellant

Vs.

CCE, Delhi-I Respondent

In Appeal No.3078 of 2010
With Stay Application No.2849 of 2010

Raj Kumar Nagpal — Appellant

Vs.

CCE, Delhi-I — Respondent

In Appeal No.3079 of 2010
With Stay Application No.2850 of 2010

Shri Anil Kumar Chakraborty — Appellant

Vs.

CCE, Delhi-I — Respondent

In Appeal No.3080 of 2010
With Stay Application No.2851 of 2010

Shri Babul Kabra,
Proprietor — Appellant

Vs.

CCE, Delhi-I — Respondent

In Appeal No.3074 of 2010
With Stay Application No.2845 of 2010

Smt. Abha Dalmia,
Proprietor — Appellant

Vs.

CCE, Delhi-I — Respondent

In Appeal No.3075 of 2010
With Stay Application No.2846 of 2010

Shri Anand Kumar Dalmia — Appellant

Vs.

CCE, Delhi-I — Respondent

In Appeal No.E/3771 of 2010
With Stay Application No.3592 of 2010

Shri S.V.Makhija Appellant

Vs.

CCE, Delhi-I Respondent

In Appeal No.3772 of 2010
With Stay Application No.3593 of 2010

Shri Sanjay Dalmia Appellant
Chairman

Vs.

CCE, Delhi-I Respondent

In Appeal No.3773 of 2010
With Stay Application No.3594 of 2010

Shri Anurag Dalmia Appellant

Vs.

CCE, Delhi-I Respondent

In Appeal No.3811 of 2010
With Stay Application No.3628 of 2010

Shri J.P. Khetan, Appellant
Managing Director

Vs.

CCE, Delhi-I Respondent

In Appeal No.3936 of 2010
With Stay Application No.3794 of 2010

Shri N.V. Joshi, Appellant
Ex-Director

Vs.

CCE, Delhi-I Respondent

[Arising out of common Order-in-Original No.CCE/Adj/TVS/8/2000 dated 26.05.2010 passed by the Commissioner of Central Excise, New Delhi].

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Ms. Sujata Sherolkar & Shri L.P. Asthana, Advocates for the appellant.
Rep. by Shri Nitin Anand, DR for the respondent

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

STAY Order No 471-83/2011-EX & 483-A/2011-EX
FINAL Order No 347-359/2011-EX /Dated 21/4/11 & Final order No 359-A/2011-EX

Per Rakesh Kumar

These are the appeals against the Order-in-Original No.V(24)1-GTC(MPTL)Adj/95 dated 26.05.2010 passed by the Commissioner of Central Excise (Adjudication), Delhi, by which the Commissioner has –

(a) confirmed duty demand of Rs.49,63,87,299 against M/s. M.P. Tobacco Ltd., Durg (hereinafter referred to as "MPTL")

M/s.GTC Industries Ltd., Bombay (hereinafter referred to as "GTC") in respect of clearances of cigarettes alleged to have been made without payment of duty during the period from 12.10.90 to 31.3.95, under Rule 9(2) of the Central Excise Rules, 1944 read with proviso (1) to Section 11 A of the Central Excise and Salt Act, 1944;

(b) Imposed penalty of Rs.49 Crores on M/s. MPTL/GTC under Rule 9(2), 52A, 226, 209(1)(a) and 209(1) (d) of the Central Excise Rules, 1944,

(c) Imposed penalty of Rs.1 Crore on GTC under Rule 209A of the Central Excise Rules, 1944,

(d) Ordered confiscation of 58 CFCs of Esquire filter cigarettes valued at Rs.3,18,768/- seized from the godown of M/s. Kabra Enterprises, Bhilai under Rule 209(1)(a) of the Central Excise Rules, 1944 with option to redeem the same on payment of redemption fine of Rs.3,18,768/- in addition to the duty leviable thereon;

(e) Imposed penalty of Rs.10 Lakh on M/s. Kabra Enterprises, Bhilai under Rule 209A of the Central Excise Rules, 1944;

(f) Imposed penalty of Rs.10 Lakh each under Rule 209 and 209A of the Central Excise Rules on Shri Sanjay Dalmia, Shri Anurag

Dalmia, Shri S.K. Mukherjee, Shri J.P. Khetan, Shri Raj Kumar, Shri G. Nagpal, Shri Anil Kumar Chakraborty and Shri H.R. Sarawgi; and

(g) Imposed penalty of Rs.25,000/- each under Rule 209 A of the Central Excise Rules, 1944 on 38 other firms/persons including Ms.Abha Dalmia, Shri Anand Kumar Dalmia, Shri Rajesh Kumar Agarwal and Shri Bhavanesh Chadda.

2. The appellants along with these appeals have also filed applications for waiver of the requirement of pre-deposit of duty demand and penalty for hearing of these appeals and also for stay on recovery thereof till the disposal of the appeals. The allegation against the GTC is that while MPTL, Durg is a dummy company floated by GTC, fully controlled by them and that actual operations right from the stage of procurement of raw materials, manufacture of cigarettes and transportation and marketing were being carried out and arranged by GTC, during the period from 12.10.90 to 31.3.92 clandestine clearances of cigarettes without payment of duty were made from MPTL's factory and thereby contravening various provisions of Central Excise Rules, 1944 and that the duty involved on these clandestine clearances was Rs.49,63,87,299/-.

3. Though this matter was listed today for hearing of the stay applications only, after hearing the stay applications for some time, we are of the view that this matter can be disposed of at this stage only and there is no point in keeping the same pending. Accordingly, the matter was heard for final disposal

4. Heard both the sides.

5. Shri L.P. Asthana, Advocate, ld. Counsel for the appellants, pleaded that the order itself is defective as well as non-est inasmuchas it has been passed on 26th May, 2010 by the Commissioner who was no longer in service at that time as he had retired in 2008, that the allegations of duty evasion against the appellants are based on very larger number of records running into about One lakh twenty thousand pages, the copies of which had not been supplied along with show cause notice, that though the inspection/supply of copies of the relied upon documents had been allowed by the adjudicating authority and that process was going on, without even completion of that process, without giving opportunity to the appellants to submit replies to show cause notice, which could not be prepared without inspection / supply of relied upon documents, and without even granting personal hearing to them, the impugned order has been passed, that the hearing referred to in the impugned

order was the hearing for review of the process of inspection/supply of relied upon documents and not the hearing on merits of the case, that as can be seen from the order, the same does not contain the submissions of the appellants, that though the department claims that the impugned order had been passed on 29.09.2000, there is no such indication on the body of the order, as the date of the order, as mentioned on the order is 26.05.2010 and it has been signed by an officer, who has retired long time back, that the order is non-est and also is in gross violation of the principles of natural justice and that in view of this, the same is not sustainable.

6. Shri Nitin Anand, ld. Departmental Representative pleaded that the order had been signed by the adjudicating authority on 29.09.2000 but it was not issued on account of stay on the proceedings granted by Hon'ble Madhya Pradesh High Court vide Order dated 30.09.2000, that the order was in existence on 29.09.2000, that the order was issued only after the stay on the proceeding was vacated and the appellants' writ petition was dismissed in 2006, that the appellants were deliberately delying the proceedings of inspection of the documents, that ample opportunity of hearing was granted to the appellants which was not availed by them, and that there was no violation of the principles of natural justice.

7. We have carefully considered the submissions from both the sides and perused the records. Though para 4 of the impugned order mentions the dates on which opportunity of personal hearing had been granted by the Commissioner, who has signed the order and previous adjudicating authorities, para 38 and 39 of the order talk of non-cooperation on the part of the appellants in completing the inspection of the documents. According to the appellants, however, the show cause notice was based on very large number of documents running into more than one lakh pages, whose copies had not been supplied and without which the appellants were not in a position to give the reply to the show cause notice and on 29.09.2000, the date on which, according to the department, the Commissioner has passed this order, even the inspection of the documents has not been completed. From para 3 of the adjudication order it is clear that the relied upon documents, being too numerous and voluminous, their photocopies had not been supplied and only their inspection and obtaining copies of the documents required by the appellants had been allowed. Para 8 to 22 discuss the efforts made by the Department for completing the inspection of documents by the appellant, while the appellant pleaded that inspection of relied upon documents was not complete. From the records of this case, it is seen that even till April 2010, there was

correspondence between DG, Central Excise Intelligence and the Appellants regarding supply of relied upon documents as in the letter ________________ dated 9.4.2010 of Addl. Director, DG, CEI, the appellants had been informed that efforts are being made to supply the copies of the relied upon documents as early as possible. This shows that even till April, 2010, all the relied upon documents had not been supplied to the appellants.

8. Even if the appellants were not cooperating with the department in completion of the inspection of documents, and the Commissioner felt it necessary to decide this matter ex parte on the ground that the appellant were deliberately prolonging the process of inspection of documents, at-least, a speaking and reasoned order should have been passed. From para 46 to 62 of the order, it is seen that the Commissioner has summarily arrived at conclusions without recording any reasons and without discussing the evidence on record, on which these conclusions are based.

9. Moreover, the order has been passed by Shri T.V. Sairam, the then Commissioner of Central Excise (Adjudication), Delhi and the date of the order, as mentioned on it is 26.05.2010, while he had retired long time back and he could not have passed this order on 26th May, 2010. Though the department claims that this order had been

signed by the Commissioner on 29.09.2000, there is no such indication in the order. In the cases where the order is signed by the adjudicating authority on a particular date and is dispatched subsequently, two dates are mentioned on the order, the date of order i.e. the date on which the order had been signed by the adjudicating authority and the date of issue of the order. But this order simply mentions its date as 26.05.2010. We are fail to understand as to how this order could have been passed in May, 2010 by the Commissioner, who has retired long time back

10. In view of the above, this order cannot be sustained and there is no option but to the remand this matter back to the adjudicating authority for de novo adjudication. The impugned order, therefore, is set aside and the matter is remanded to the original adjudicating authority for de novo adjudication. Since the matter involves huge amount of revenue and is about 15 years old and since being of period prior to 28.09.96, the interest provisions of Section 11 AB are not applicable and only interest on duty demand confirmed under Section 11A(2) can be charged under Section 11 AA, which would become applicable only w.e.f. the date succeeding the date of expiry of three months from the date of adjudication order, and thus every day's delay in adjudication of this matter results in undue

benefit to the appellant, this matter has to be adjudicated as expeditiously as possible. For this purpose, the following directions are given for its expeditious adjudication:-

(a) Inspection/supply of the copies of the relied upon documents, if any, still required, must be completed within a period of 4 months form the date of this order. The appellants shall extend full cooperation to the department in this regard. The documents in respect of which the department has clear evidence that the same have already been supplied to the appellants, need not be supplied again. In order to expedite this process, the Department should consider scanning the relied upon documents and handing over the same to noticees in CDs or in USB storage devices;

(b) After completion of the inspection/supply of the relied upon documents, the process of submitting the reply to the show cause notice and personal hearing shall be completed within a period of 4 months;

(c) After completion of personal hearing, the adjudicating authority shall pass the order within two months;

The above time limits for inspection/supply of relied upon documents, submitting reply to the show cause notice, personal hearing and passing of the adjudication order are only the outer limits. We expect both the sides to make sure that the entire de novo adjudication proceedings are completed much earlier. Needless to say, the order passed by the Commissioner must be a speaking and well reasoned order.

11. Before parting, we can not help expressing our anguish and surprise at the manner in which this matter involving huge revenue has been handled by the Department. The main appellants, GTC, MPTL and their Managing Director and Directors face serious allegations of duty evasion to the tune of Rs.49 Crores in respect of clandestine clearances of cigarettes made from the factory of MPTL without payment of duty during October, 90 to March, 95 and MPTL is alleged to be a dummy unit controlled by GTC. These allegations appear to be based on documentary evidence consisting of statements and seized records running into more than one lakh pages. Since the period of dispute is prior to September, 1996, the provisions of interest on duty under Section 11 AB are not applicable and the only way interest on duty demand, if any confirmed, could be charged was by invoking Section 11 AA, under which interest is to be charged on the duty demand confirmed under Section 11 A(2), if the assessee does not pay the same within the period of three months from the date of confirmation of duty demand and this called for adjudication of the show cause notice dated 29/9/95 as early as

possible, as delay in adjudication would suit the appellants. Since the case against the Appellants was based on a large number of documents, it was expected that all the relied upon documents would be indexed and either their copies would be supplied to the Appellants or their inspection allowed in a systematic manner so that the appellant are not able to exploit the excuse of non-supply of relied upon documents to delay the adjudication proceedings. In this regard, there are specific instructions of the Board vide Circular No.171/5/96-CX dated 2.2.96 according to which whenever any documents/records are seized, immediate efforts must made to segregate the documents proposed to be relied upon in establishing the charges from the remaining documents/records, after issue of show cause notice assessee must be allowed to obtain copies of relied upon documents/records and the documents/records not relied upon must be returned to the party under proper receipt. These instructions had been issued so that the parties may not be able to delay the adjudication proceedings by the excuse of non-supply of relied upon/non-relied upon documents. But, in this case, it appears that this is what the appellants have been allowed to do. Even after 15 years from the date of issue of show cause notice, the appellants claim that all the relied upon documents have not been supplied/allowed to be inspected, which is clear from the letter ________ dated 9.4.2010 of Addl. Director, DGCEI. Even if there was stay on adjudication proceedings by the order of Hon'ble Madhya Pradesh High Court, but still the relied upon documents could have been supplied as there was no stay on the same. Even the stay on adjudication proceedings was vacated in 2006 but even then, for four years no action was taken for completing the adjudication proceedings in a proper manner. It appears that only in May 2010 the department woke up to the fact that the matter is still un-adjudicated and the impugned order bearing 26.05.2010 has been issued but it is signed by the Commissioner who had retired in 2008. The order passed after 15 years is an ex-parte and non-speaking order supposed to have been issued by an office who had retired long time back. Issuing such an unsustainable order will only help the appellants in further delaying the adjudication of this matter, which discussed above suits only the appellants as their interest savings by now in the event of confirmation of duty demand would be much more than the duty demand. This Tribunal, in another matter against GTC involving duty demand of Rs.11.79 crores pertaining to period prior to September, 1996 [Appeals Nos.E/1688-1689/09], while rejecting the stay applications vide Order No.112-113/2010 dated 15.02.2010 for total waiver had observed that even though the matter had been remanded to Commissioner for de novo adjudication by Hon'ble Supreme Court vide order dated 22.07.97, the de novo adjudication order was issued by the Commissioner only in March, 2009 after delay of 11 years. We wonder whether these delays, for which there is no explanation and which benefit M/s. GTC are deliberate.

12. In view of this matter involving huge revenue being now 15 years old, we consider it appropriate to direct the Chairman of Central Board of Excise & Customs to monitor the de novo adjudication of this matter and make sure that the adjudication proceedings are completed within the time limit specified. The Registry is directed to endorse a copy of this order to the Secretary (Revenue) and Chairman, Central Board of Excise & Customs.

13. The appeals and the stay applications are disposed of as above.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.