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/1798/2005-1799/2005 - EX[DB]

Date 04/05/2011

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

To :
M/S BANG MARBLES & GRANITES PVT.LTD.
E-465, RIICO IND. AREA,TUNKRA ROAD,MADANGANJ-
KISHANGARH DISTT AJMER RAJASTHAN

M/S BANG MARBLES & GRANITES PVT.LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.386-387/ 2011 EX[DB]** dated 20-4-11

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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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 (Haryana)
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
14. HON'BLE PRESIDENT,

ASSISTANT REGISTRAR
(EX. APPEAL BRANCH)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 20.04.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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. 1798 - 1799 of 2005
[Arising out of Order in Appeal No. 115-116 (RM)CE/JPR-II/2005 dated 23.02.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur].

M/s Bang Marbles & Granites Pvt. Ltd. Appellants
[Rep. by Shri Saurabh Yadava, Advocate]

Vs.

CCE, Jaipur Respondent
[Rep. by Shri B.K. Singh, Jt. CDR]

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

FINAL Oral Order No. 386 - 387 / 2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and the Joint CDR for the respondent.

2. These appeals arise from the order passed by the Commissioner (Appeals) whereby appeals were dismissed solely on the ground that the appellants did not comply with the order regarding the requirement of pre-deposit.

3. The appellants had preferred appeal before the Commissioner (Appeals) against the order passed by the adjudicating authority on 07.03.2002 and 28.03.2002. Under the order dated 07.03.2002, the appellants were required to pay the duty to the tune of Rs. 108846/- alongwith equal amount of penalty and the personal penalty against the Director to the tune of Rs. 10,000/-. Under the order dated 20.03.2002, the appellants were required to pay the penalty of Rs. 15,000/-. Under order dated 02.11.2004, the Commissioner (Appeals) directed the appellants to deposit 50% of the duty and penalty. However, the appellants failed to deposit the same but they filed the miscellaneous application for modification of the stay order which came to be dismissed by order dated 11.01.2005. On account of failure on the part of the appellants to deposit the said amount within the stipulated period both the appeals came to be dismissed by the impugned order.

4. When the matter came up for hearing before the Tribunal while disposing the stay application, the Tribunal directed the appellants to deposit 50% of the duty amount. Undisputedly, the said amount has been deposited by the appellants.

5. It appears that the controversy which is sought to be raised by the appellants in the matter relates to the point as to whether the appellants are

liable to discharge the duty liability of their predecessor owners of the factory. It does not appear to be in dispute that the factory originally belonged to M/s Prakashalika Marbles Pvt. Limited which came to be purchased by the appellants under deed of conveyance dated 15.05.2002. Considering the fact that important question of law and facts having been raised by the appellants and they having already deposited 50% of the duty, we find it appropriate to set aside the impugned order and to remand the matter to the Commissioner to deal with the appeal on merits in accordance with provision of law, while considering the deposit of 50% of duty to be sufficient for the compliance of Section 35F of the Central Excise Act, 1944.

6. Needless to say that we have not expressed any opinion on the merits of the case and all above observations are merely for the purpose of deciding the appeal in relation to the point pertaining to pre-deposit.

7. For the reasons stated above, therefore, the impugned order is set aside and matter is remanded to the Commissioner (Appeals) to decide the appeal on merits in accordance with the provision of law while considering the deposit of 50% to be sufficient for compliance of the provision of law under Section 35F of the said Act.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/