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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/1637/2004-1640/2004 - EX[DB]   Date 04/05/2011

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

To :
M/S.HINDUSTAN PROCESSORS LTD., ← 15. SH. NAVJOT JHANWAR EXECUTIVE DIRECTRO
GUWARDI, CHITTORGARH ROAD, BHILWARA(RAJ.)

HINDUSTAN PROCESSORS LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.389-392/ 2011 EX[DB]** dated 18-4-11 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 SH. G.K. SARKAR, ADV., C/O
SH. K.K. ANAND, ADV.,
A-5, BASEMENT,
LAJPAT NAGAR-III
N. 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
(Excise Appeal Branch)

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

Date of hearing/decision: 18.04.2011

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?	Yes

Excise Appeal No. 1637 & 1640 of 2004

M/s Hindustan Processors Ltd. — Appellants

Vs.

CCE, Jaipur — Respondent

AND

Excise Appeal No. 1638- 1639 of 2004

Sh. Navjot Jhanwar, E.D. of
M/s Hindustan Processors Ltd. — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:
Rep. by Shri G.K. Sarkar, Advocate for the appellants.
Rep. by Sh. Nitin Anand, DR for the respondent.

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

FINAL ORAL ORDER NO. 389-392/2011-EX

Per: Hon'ble Shri Justice R.M.S. Khandeparkar:

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

2. These appeals have been heard in terms of order passed by the Hon'ble High Court of Rajasthan in CEA No. 13/2005 on 13.12.2010.

3. All these appeals in fact were disposed of by this Tribunal by order dated 22.06.2004. By the said order, apart from granting certain other reliefs the Tribunal had reduced the penalty imposed upon the assessees. The department being aggrieved by the reduction in the penalty amount approached the High Court without any success. The matter was then carried to the Hon'ble Supreme Court and by order dated 29.09.2008, the Apex Court upheld the contention of the department to the effect that the penalty imposable under Section 11AC of the Central Excise Act, 1944 has to be equivalent to the duty liability and there is no discretion left in that regard to the excise officers. To put an end to the controversy, the Apex Court referred the matter to the Larger Bench in the matter of **Union of India** vs. **Dharamendra Textile Processors** reported in 2008 (231) ELT 3 (SC) confirmed that the quantum of penalty under Section 11AC has to be equal to the duty liability. In relation to other aspect, the matters were remanded to the respective High Courts. Consequently, on remand of the appeals to the Hon'ble High Court of Rajasthan, the same came to be disposed of by the order dated 13.12.2010 with the direction that the

Tribunal will have to decide the appeal while examining the issue as to whether in the facts and circumstances of the case it is appropriate to set aside the penalty imposable as equal to the amount of duty under Section 11AC of the said Act only on the ground that the assessee had deposited the amount of duty prior to the issuance of the show cause notice.

4. In fact, the said issue is no more res-integra in view of a clear decision of the Apex Court in the case of **Union of India** vs. **Rajasthan Spinning & Weaving Mills** reported in 2009 (238) ELT 3 (SC). The Apex Court therein while rejecting the contention that the 100% penalty should not be imposed in case where assessee pays the duty prior to the issuance of the show cause notice, observed thus:

> "15. Sub-section 2B of Section 11A provides that in case the person in default makes payment of the escaped amount of duty before the service of notice then the Revenue will not give him the notice under sub-section 1. This, perhaps, is the basis of the common though erroneous view that no penalty would be leviable if the escaped amount of duty is paid before the service of notice. It, however, overlooks the two explanations qualifying the main provision. Explanation 1 makes it clear that the payment would, nevertheless, be subject to imposition of interest under Section 11AB. Explanation 2 makes it further clear that in case the escape of duty is intentional and by reason of deception the main provision of sub section 2B will have no application".

5. The above quoted para clearly answers the issue to be decided in the matter and is accordingly answered. The appeals accordingly stand disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant