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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

Date 25/05/2011

Appeal No. E/60 /2011 - EX[DB] WITH
E/COD/6/11, E/S/76/2011-EX

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

To :
M/S TRIVENI GLASS LTD.,
IRADATGANJ, ALLAHABAD,
(U.P.)

M/S TRIVENI GLASS LTD., Appellant

Vs

C.C.E ALLAHABAD Respondent

STAY ORDER NO.576/2011-EX
MISC ORDER NO. 300/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.441/ 2011 EX|DB|** dated 13-5-11 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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.II, R.K. PURAM, NEW DELHI-110066.
PRINCIPAL BENCH
Court No.1

E/COD/06/2011 in Appeal E/60/2011

E/Stay/76/2011 in Appeal No.E/60/2011

(Arsing out of Order-in-Appeal No.221/CE/Alld/2010 dated 27.9.2010 passed by the CCE (A), Allahabad)

For approval and signature:

Hon'ble Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr.M.Veeraiyan, 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?	NO

M/s.Triveni Glass Limited — Appellants

Vs.

CCE, Allahabad — Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri Nittin Anand, SDR

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. M.Veeraiyan, Member (Technical)

Date of Hearing: 13.05.2011
Date of Decision: 13.05.2011

Stay order No. 576/2011-EX
Misc **ORAL ORDER NO.** 300/2011-EX
Final oral order No. 441/2011-EX

PER: M.VEERAIYAN

Considering the grounds in the application, for condonation of delay, the delay of 13 days in filing the appeal, is condoned.

2. Heard both sides for a while on stay petition. Considering the nature of the dispute, we deem it appropriate to waive pre-deposit of dues as per impugned order and take up the appeal itself for final disposal.

3. We find that the original authority vide order dated 31.8.2009 confirmed the demand of Rs.30,00,721/- alongwith interest and imposed equal amount as penalty under Rule 25 of Central Excise Rules, 2002. The Commissioner (Appeals) vide stay order dated 18.8.2010, after taking note that the appellant has deposited a sum of Rs.16,96,194/-, directed the balance amount of Rs.13,04,527/- to be deposited and to submit proof by 10.09.2010. Vide order dated 27.09.2010, the Commissioner (Appeals) has dismissed the appeal for failure to comply with order of the pre-deposit passed under Section 35F of Central Excise Act, 1944.

4. Learned Advocate submits that the appellants were facing financial crisis and stands referred to BIFR and therefore they could not deposit the amount as directed vide stay order. He submits that the Commissioner (Appeals) has not given personal hearing before dismissing the appeal which is in violation of principles of natural justice. In this regard, he relies on the decision of the Tribunal in the case of Uniworth Textiles Limited vs. CCE, Raipur reported in 2010 (253) ELT 55 (Tri.-Del.).

5. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals).

6. We find that the Commissioner (Appeals) has not decided the issue on merits. He has dismissed the appeal on the ground that the appellants have not complied with the pre-deposit order. He has not granted a personal hearing before passing such order dismissing the appeal. In view of the above, we deem it appropriate to set aside the order of the Commissioner (Appeals) and remand the matter for fresh consideration by the Commissioner (Appeals) on merits subject to the appellants depositing the balance amount of duty of Rs.13,04,527/- within 12 weeks from today and reporting compliance before the Commissioner (Appeals).

7. In case the appellants fail to fulfil the condition of this order, this order shall stand automatically vacated and the appeal shall stand dismissed.

8. The appeal is allowed by way of remand on the above terms. The COD application and the stay petition are also disposed of.

(Pronounced in the open court)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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