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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/477 /2010-485 /2010 - EX[DB] WITH E/S/488-496/2010-EX   Date **19/09/2011**

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

To :
M/S. MET TRADE INDIA LTD.
152, SICOP INDUSTRIAL AREA, KATHUA (J&K)

M/S. MET TRADE INDIA LTD.   Appellant

Vs

C.C.E. JAMMU   **STAY ORDER NO. 878-886/2011-EX**   Respondent

I am directed to transmit herewith a certified copy of **Final order No.804-812/ 2011 EX[DB]** dated 15-9-11 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. JAMMU
OB-32, RAIL HEAD COMPLEX,
JAMMU - 180012.

2. Adv. / Consult
MR.PRAVEEN SHARMA
KF-84, KAVI NAGAR, GHAZIABAD

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 De.
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 (Harvana)
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

Assistant Registrar
(Excise Appeal Branch)

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

Excise Stay Applications Nos.488-496 of 2010
In Excise Appeal No.E/477-485 of 2010

[Arising out of common Order-in-Appeal No.625-633/CE/APPL/CHD-II(JK)2009 dated 30.11.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh].

M/s. Met Trade India Ltd. Appellant

Vs.

CCE, Jammu Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
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 Shri Pravin Sharma, Advocate for the appellants.
Rep. by Shri K.P. Singh, DR for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No 878-886/2011 -EX
FINAL Order No. 804-812/2011-EX/Dated: 12.09.2011

Per Archana Wadhwa:

After hearing both the sides, we find that vide his impugned order, the Commissioner (Appeals) has rejected all the 9 appeals on the ground of non-compliance with the stay order passed by him. We find that the appellate authority vide his stay order directed the appellant to deposit full amount of duty in some cases and part amount in other. The said duties were confirmed against the appellants by the original adjudicating authority on the ground that Education Cess and Higher Education Cess are not liable to be refunded in terms of the order passed in exemption notification no.56/02. A part of the demand was confirmed on the ground that the freight undertaken by them would not form part of the assessable value and as such, duty paid on the same is not liable to be refunded.

2. As per ld. Advocate appearing for the appellants, they filed a modification application before the Commissioner (Appeals) contending that they have not taken refund of Education Cess and Higher Secondary Education Cess paid at the time of clearance of their final products. As regards, the refund of duty paid on the freight amount and other valuation, ld. Advocate submits that they have already deposited the said amount, which does not stand considered by the Commissioner (Appeals). Further, the modification application was also not considered and the appeals were

dismissed without appreciating the grounds advanced in the modification application.

3. After considering the above plea of the appellants and taking note of the fact that the duty pertaining to the charges of other valuation and freight, stands deposited by them, we set aside the impugned order of dismissal of appeals and remand the matter to the Commissioner (Appeals) to consider their modification application and pass the orders on the same and thereafter decide the appeals accordingly. The appellate authority would also verify on the part compliance with the stay order, as contended by the appellants.

4. The stay petition as also the appeal gets disposed of in the above terms.

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.