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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/2401/2010-2404/2010 - EX[DB] WITH E/S/2224-2227/2010-EX — Date **04/10/2011**

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

To :
M/S OTR PAPERS PVT. LTD.
B-3 & 4, UPSIDC INDUSTRIAL AREA,
SIKANDRABAD, BULANDSHAHAR, (U.P.)_

M/S OTR PAPERS PVT. LTD. — Appellant

Vs

C.C.E. NOIDA — **STAY ORDER NO. 1010-1013/2011-EX** — Respondent

I am directed to transmit herewith a certified copy of **Final order No.840-843 2011 EX[DB]** dated 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. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult SH. UJJWAL KUMAR, ADV. C/O
MR.ANIL KUMAR TIWARY &PRAVEEN KUMAR TEWARI
BRAHMADUTTA CHAMBERS OF LAW, 111-112, G.C. COMPLEX, NAYA BANS
SECTOR-15, OPPOSITE NIRULA'S HOTEL, NOIDA.

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 (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

P.T.O.-2,

Assistant Registrar
(Excise Appeal Branch)

14. SHRI YOGESH, SUPERVISOR,
M/S OTR PAPERS PVT. LTD. B-3 & 4, UPSIDC INDUSTRIAL AREA,
SIKANDRABAD, BULANDSHAHAR, (U.P.)_

15. SHRI NEERAJ JINDAL, DIRECTOR,
M/S OTR PAPERS PVT. LTD. B-3 & 4, UPSIDC INDUSTRIAL AREA,
SIKANDRABAD, BULANDSHAHAR, (U.P.)_

16. SHRI SAMEER GARG, DIRECTOR,
M/S OTR PAPERS PVT. LTD. B-3 & 4, UPSIDC INDUSTRIAL AREA,
SIKANDRABAD, BULANDSHAHAR, (U.P.)_

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. II

Stay Application No.2224-2227 of 2010 in Excise Appeal No.2401-2404 of 2010

Date of Hearing / Decision : 15.09.2011.

M/s OTR Papers Pvt. Ltd. — Appellant
Shri Neeraj Jindal
Shri Sameer Garg
Shri Yogesh

Versus

CCE, Noida — Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Present for the Appellant - Shri Ujjwal K., Advocate
Present for Respondent - Shri I.Baig, DR
STAY order No. 1010-1013/2011-EX
FINAL **Order No.** 840-843/2011-EX **Dated :**____________

Per D.N. Panda:

Ld. Counsel submits that violating principles of natural justice, matter was adjudicated. He invites attention to page 118 of the appeal folder to demonstrate that by a letter dated 20.3.10 the appellant sought copies of certain documents in order to prepare its defence. But the authorities did not supply the same. Revenue made a case against the appellant using certain documents recovered from the premises of third parties. Those documents should be exposed to appellant Since those are essential for leading defence. When the documents were not provided, adjudication became arbitrary and duty and penalty imposed is not realizable. He highlights that during the course of adjudication, an amount of Rs. 15 lakhs has already been deposited which is apparent from para (i) at page 54 of the adjudication order. He also pleads that because of the financial difficulties, pre-deposit order for further amount shall cause undue hardship.

2. Ld. DR on the other hand invites attention to the page 154 of the appeal folder to demonstrate how due process of justice was followed by Revenue. He states that as early as 2008, this appellant has been given opportunities to lead its defence and grant of personal hearing served the purpose. The predecessor of the adjudicating authority failed to complete adjudication because of non-cooperation of appellant. Even the successor officers, on the request of the appellant, adjourned the matter from- time-to-time. It was an averment of the appellant that these documents were lying with their consultant. When the authorities were made helpless because of the non-cooperation by the appellant, consequence of adjudication was to follow. Accordingly, the appellant may be directed to make pre-deposit during pendency of the appeal.

3. We have heard both sides extensively. While violation of natural justice is the grievance of the appellant, assignment of weightage to Revenue's interest and protection thereof is prayer of Revenue. We do agree that due course of justice should be followed to complete adjudication. But the manner the adjudication authority has brought out facts of the case beginning

in para 35 of his order to para 42 appearing at page 36 to page 40 of the said order, that demonstrates that the appellant was never been deprived of the process of justice.

4. We have perused the Show Cause Notice which was issued on 1.4.2008. The appellant's grievance as to violation of natural justice does not appeal to us. Reply given by appellant was recorded in para 34 of the adjudication order. The elaborate reply given by the appellant clearly demonstrates that there was no denial of opportunity to the appellant to plead its case. The reply filed indicates that the appellant was quite aware of material facts of the case within the knowledge of the appellant. The appellant failed to get its grievance redressed after 20.3.2010 when documents were not given to it. We are unable to appreciate the relevancy of the document as to whether that comes to rescue of the appellant when nothing was pleaded to show its utility. One of the grievances is denial of cross examination. That is not demonstrated to show how denial of such examination prejudiced the appellant. Apart from that, we have also read the discussion and findings of the adjudication order and we are satisfied that the authority has applied its mind to resolve the matter in controversy.

5. When we are able to observe as above and find balance of convenience tilts in favour of Revenue, we are guided by the judgement of Hon'ble High Court of Punjab & Haryana in the case of Shiv Seva Sadan - 2011(22)STR118(P&H) to protect interest of

Revenue directing the appellant to make further deposit of Rs. 20 lakhs (twenty lakhs) within four weeks from today. We are conscious that such a small time is allotted to appellant to make payment. But we are also helpless to state that when the appellant prays for an opportunity for hearing, it has to make above deposit to avail such opportunity early. Therefore, if the appellant is conscious of its rights, it should also protect the interest of Revenue and seek expeditious disposal of the appeal.

6. We have also examined the plea of financial difficulties of the appellant. But the plea is in vacuum without any evidence on record. Therefore, that does not help the appellant.

7. In view of our aforesaid observations, we direct the appellant to make deposit of Rs. 20 lakhs (twenty lakhs) within four weeks from today and produce the challan before the adjudicating authority on 8.11.2011 and make an application to that authority to fix the date of hearing so that that authority shall proceed for expeditious disposal of the matter proposed to be remitted by this order.

8. The appellant if intends to seek copies of relied upon documents it may inspect record and upon inspection, if copies thereof are necessary, on payment of appropriate fee, it shall be entitled to copies thereof. We expect the authority to complete de novo adjudication by end of March, 2012 or as early as possible on its part to redress grievance of the appellant.

9. Ld. Counsel prays that all legal pleadings should be permissible in the course of de novo adjudication to be raised. We have no disagreement to that.

10. In view of our aforesaid observations and order in the principal case, i.e., Appeal No.2401/10, the other appellants need not make any deposit but shall appear for hearing of de novo adjudication on the date fixed.

11. All the stay applications are disposed accordingly in the manner aforesaid and all appeals are remanded.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

(Mathew John)
Technical Member

RK-I