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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/491 /2011 - EX[DB] WITH E/S/576/2011-EX Date **07/10/2011**

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

To :
M/S SUZUKI SYNTEX,

1-2, ARIHANT NAGAR, OLD INDUSTRIAL AREA,
BHILWARA (RAJASTHAN)

M/S SUZUKI SYNTEX, Appellant

Vs

C.C.E. JAIPUR II **STAY ORDER NO. 1030/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.852/ 2011 EX[DB]** dated 03-10-11 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.APJ-SLG LAW OFFICES,
F-21, GEETANJALI ENCLAVE, NEW DELHI-110017

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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 491 of 2011
Excise Stay Application No. 576 of 2011

[Arising out of Order-in-Appeal No. 407(CB)CE/JPR-II/2010 dated 29.10.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur II]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
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

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M/s. Suzuki Syntex — Appellants

Vs.

Commissioner of Central Excise
Jaipur — Respondent

Appearance:

Shri Jitender Singh, Advocate for the Appellants
Shri N.Pathak, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 12.09.2011
STAY Oral order No. 1030/2011-EX
FINAL **ORAL ORDER NO. 852/2011-EX**

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of duty of Rs.29,01,026/- and penalty of identical amount, we proceed to decide the appeal itself with the consent of both the sides.

2. After hearing Shri Jitender Singh, learned Advocate appearing for the appellant and Shri N Pathak, learned DR for the revenue, we find that the appellant is engaged in drawing and manufacturing of Partially Oriented Yarn (POY). Their factory premises were visited by the Central Excise officers on 31.8.05, who conducted various checks and verifications. It was found that a Draw Winder Machine so installed in the appellant's factory, ~~and~~ was working. Inasmuch as the appellants were availing the benefit of Notification No. 30/2004-CE dated 9.7.04, which contains an exception to the extent that the said exemption is not available when the facility of drawing is available in the manufacturing plant. However, the said notification No. 30/2004-CE dated 9.7.04 was amended with effect from 1.3.05 and the yarn subjected to Draw Winder also became exempt.

3. The dispute in the present appeal is as regards the correct date of instalment of the Draw Winder Machine in the appellant's factory. If the same is bought and installed in the factory prior to 1.3.05, the

benefit of exemption is not available. However, if the appellants have purchased the same after 1.3.05, the exemption would be available to them irrespective of the draw winder ing ~~machine~~ of POY. It is seen that the lower authorities have gone by the statements of the representative of the appellants accepting that the said Draw Winder Machine was installed in their factory right from the beginning. It also stands recorded that inspite of being repeatedly directed to submit the purchase bill of Draw Winder Machine, the same was not submitted. It was only with reply to the show cause novice that an invoice No. M 18 dated 2.4.05 of M/s. Triangle Textile Service, Surat was filed before the authorities. The authorities have rejected the same on the ground that it is an afterthought and has not taken the said invoice into consideration.

4. The appellants grievance is that when the documentary evidence indicating the genuine purchase of Draw Winder Machine is available, it was not open to the lower authorities to place reliance on the oral evidence like statement of authorised representative, without verifying the correctness of the said invoice.

5. We find that admittedly, the invoice showing the purchase of machines was ~~so~~ produced before the authority, ~~the~~ Revenue, if desired, could have examined and verified the correctness of the same. Instead, they have chosen to disregard the said invoice on the sole ground that the same stand filed along with show cause notice and as such is an afterthought. We find that when the documentary evidence is available, the authorities were duty bound to taken the same into

consideration and verified the correctness of the same instead of rejecting the same on the preliminary ground of having been produced at a later date. With these observations, we set aside the impugned order and remand the matter to original adjudicating authority for reconsideration of the said invoice produced by the appellants in support of their plea that the machine was purchased after March, 2005.

6. The stay petitions and appeal get disposed of in the above terms.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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