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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/2405/2010 - EX[DB] WIRH E/S/2228/2010-EX Date **11/10/2011**

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

To :
M/S BECTON DICKINSON INDIA PVT. LTD.
PLOT NO. 1, 93 K.M.STONE, NH-8, INVESTATE,
BAWAL, DISTT. REWARI. (HARYANA)
M/S BECTON DICKINSON INDIA PVT. LTD. Appellant

Vs

C.E.E. DELHI III **STAY ORDER NO. 1031/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.856/ 2011 EX[DB]** dated 30-9-11 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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult SH. J. VELAPALLY, SR. ADV,
H C/O APPELLANT.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.II

E/Stay No.2228/2010 in E/Appeal No.2405/2010

(Arising out of order in appeal No.228/MA/GGN/2010 dated 10.5.2010 passed by the Commissioner of Central Excise (Appeals), Gurgaon)

Date of Hearing: 22.9.2011

M/s Becton Dickinson India Pvt Ltd — Appellants

Vs

CCE, Delhi-III — Respondent

Appeared for the Appellant: Shri J.Velapally, Sr. Advocate
Appeared for the Respondent: Shri Sumit Kumar, DR

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

STAY ORDER No. 1031/2011-EX
FINAL ORDER No. 856/2011-EX

Per D.N. Panda:

Learned Counsel submits that following the past practice, an average formula was adopted taking sales tax and other levies of State into consideration for determining assessable value of the impugned goods and payment of excise duty was made at the time of clearance thereof at the factory gate while such goods were sent to depots. Quantum of State levies and duties were not known to appellant at the time of clearance. On 23.7.2008 the appellants forwarded appropriate information to the Authority below when called for. In some of the cases, duties have been paid in excess. The appellant was cooperative to provide the figures with relevant details and informed the Authority to come to a proper conclusion. But adjudication was done hurriedly without looking to the difficulties of the Appellants.

2. Learned DR states that when the appellant could not disclose assessable value properly, proper adjudication was done issuing show cause notice. Therefore, there should be pre-deposit for deciding the appeal.

3. Heard both sides. When we look to para 24 of the impugned order, we find that difficulties have been experienced by both sides when state levies and duties were not known at the time of clearance. Therefore, waiving requirement of pre-deposit, we remand the matter back to the original authority to determine the assessable value on the basis of facts and figures. The appellants shall be given reasonable opportunity of hearing at the time of re-adjudication. All legal pleadings are open to the appellant during that process.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*