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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/174 /2011,225/2011,290 /2011-292 /2011,476 /2011 - EX[DB] Date **12/10/2011**
E/S/203,266,347,348,349,561/2011-EX

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

To :
SH. RAJ KISHORE PANDEY, PROPRIETOR,
M/S VIJAY TRANSPORT SERVICES, SECTOR-11, ITI
COMPOUND, OPP. HCL, NOIDA.
201301

SH. RAJ KISHORE PANDEY, PROPRIETOR, Appellant

Vs

C.C.E. DELHI II STAY ORDER NO.1053-1058/2011-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.864-869 2011 EX[DB]** dated 10-10-11 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. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.BHASIN SETHI & ASSICIATE
401,SATYAM CINEMA BUILDING,RANJEET NAGAR,DELHI

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 Copv
13. Guard file

P.T.O.-2)

Assistant Registrar
(Excise Appeal Branch)

14. M/S CARRYCO CARRIERS,
RAWALPINDI GARDEN, P.O. CHIKEMBERPUR, GHAZIABAD (U.P.)

15. MR. SUBHASH SRIVASTAV,
M/S KISHORE TOBACCO COMAPNY,
242/1-B, KARAWAL NAGAR DELHI

16. MR. DINESH CHAURASIA,
M/S KISHORE TOBACCO COMAPNY,
242/1-B, KARAWAL NAGAR DELHI

SH. NAWAL KISHORE CHAURASIA,
17. M/S KISHORE TOBACCO COMPANY,
242/1-B, KARAWAL NAGAR DELHI

18. M/S. NORTHEASTERN CARRYING CORPORATION LTD,
97-A, SHYAM ENCLAVE, GIANI BORDER,
P.O. CHIKEMBERPUR, GHAZIABAD

19. SH. VIVEK SINGH, & MANISH KAUSHIK, ADV.,
A-414, DEFENCE COLONY, N. DELHI-24

20. KHAITAN & CO.
1105, ASHOKA ESTATE
24, BARAKHAMBA ROAD, N. DELHI-01

21. SH. J. P. KAUSHIK, ADV.,
A-14/3, SAKET, N. DELHI-17

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. II

Date of Hearing : 26.9.2011

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?.	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Excise Stay No. 203 of 2011 & Excise Appeal No. 174 of 2011

(All Appeals arising common Order-in-Original No. 05/2010 dated 29.10.2010 passed by the Commissioner, Central Excise, New Delhi)

Shri Raj Kishore Pandey, Proprietor
M/s Vijay Transport Services — Appellant

Vs.

CCE, New Delhi — Respondent

Excise Stay No. 266 of 2011 & Excise Appeal No. 225 of 2011

M/s North Eastern Carrying Corporation Ltd. — Appellant

Vs.

CCE, Delhi-II — Respondent

Excise Stay No. 347 of 2011 and Excise Appeal No.290 of 2011

Shri Nawal Kishore Chaurasia — Appellant

Vs.

CCE, New Delhi — Respondent

Excise Appeal No. 348 of 2011 and Excise Appeal No.291 of 2011

Shri Dinesh Chaurasia- M/s Kishore Tobacco Co. Appellant

Vs.

CCE, New Delhi Respondent

Excise Stay No. 349 of 2011 and Excise Appeal No. 292 Of 2011

Shri Subhash Srivastav Appellant

Vs.

CCE, New Delhi Respondent

Excise Stay No. 561 of 2011 and Excise Appeal No. 476 of 2011

M/s Carryco Carriers Appellant

Vs.

CCE, Delhi-II Respondent

Appearance:

Appeared for Appellant : Shri S. Ganesh, Sr. Advocate, Shri J.P. Kaushik, Shri A. Mehrotra, Shri Manish Mishra, Advocates

Appeared for Respondent : Shri Sumit Kumar, DR

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

STAY Order No. 1053-1058/2011-EX
FINAL Order No. 864-869/2011-EX dated............

Per **D.N. Panda :**

Ld. Senior Counsel submits that merely taking into consideration all the statement recorded from some persons who were named in page 161 of the Paper Book containing the submission of the Appellant before Adjudicating Authority, that Authority proceeded against the Appellant raising various demands through the impugned order. The period in question is 2004-05 to 2006-07 and dealt by a Show Cause Notice dated 20th October 2009 ending with the Adjudication on 29.10.2010. The Appellant although prayed for cross-examination of the persons named above they were not ~~being~~ examined, So Appellant's interest has been seriously prejudiced. Revenue made a case raising arbitrary demand without considering the parameters laid down in the case of **Galaxy Indo Fab. Ltd. Vs. CCE** reported in 2010 (258) ELT 254 and **Kothari Products Ltd. Vs. CCE** reported in 2003 (159) ELT 1187. If those parameters are considered, the Appellant shall not suffer at all since there is a dis-proportionate quantity of the production arbitrarily determined in the Adjudication. The Appellant has also brought action against the counterfeit product manufacturer and criminal prosecution in those cases are in process of trial. He relies on the bunch of documents which are existing in page 162 to 239 of the Appeal folder.

2. Principal submission of ld. Sr. Counsel being that there was violation of natural justice due to no whisper of any reason in the discussions and findings of the impugned order for not dealing with the prayer for cross-examination, the impugned order not only suffers from legal infirmity but that shall also be unsustainable. Not only pre-deposit is required to be waived but also the adjudication order need to be set

aside when the authority failed to examine specific prayer of the Appellant in the submission made on 9th Sept. 2010 for grant of an opportunity of cross-examination.

3. Shri Kaushik, ld. Counsel appearing on behalf of Raj Kishore in Appeal No. E/174/2011 specifically prays for supplying the relied upon document to him. The authority should not fail to supply the same if that is used in the SCN against the appellant.

4. On the other hand, ld. DR brings out that investigation resulted seizure of various incriminating documents and gathered evidence recorded under Section 14 of Central Excise Act, 1944. When excess goods were found in terms of page- 104 of the Adjudication order that led the investigation to probe into the matter further. Gradually investigation resulted with ultimate clandestine clearance of the goods by the Appellant. The Authority has examined entire evidence on record and passed appropriate order.

5. We have examined the discussions and findings portion of the impugned order. We are unable to find the reason why the Authority did not deal with the submission of the appellant on the point of cross-examination in the order. Once such a principal submission made by the

Appellant remained undealt in the impugned order, the order passed suffers from the violation of natural justice and that becomes incurable before us. When the matter goes to root, we are not able to satisfy even for a moment about legal validity of the impugned order.

6. Ld. Sr. counsel submits that if two months time is granted to the Appellant, the Appellant shall cooperate with department for de-novo adjudication since interest of Revenue has been protected by deposit of Rs.40.00 lakhs (Rupees Forth lakhs) during pendency of Adjudication which is patent from page-103 of the impugned order. So also the Appellant has given bank guarantee to the extent of 9.5 lakhs. Revenue is thus protected to the extent of Rs. 49.5 lakhs. But ld. DR submits that further deposit may be directed by Tribunal to complete fresh adjudication since huge stake of revenue is involved. We are not in agreement with Revenue at this stage when following of principles of natural justice is a paramount consideration and failure thereof is patent from the order before us. However, we direct that the bank guarantee shall continue till Adjudication is completed and subject to consequence of re-adjudication, the Authority may pass appropriate order on such guarantee. The Appellant shall also not insist for refund of Rs.40 lakhs (Rupees Forty lakhs) during pendency of re-adjudication as has been

averred to have been deposited as aforesaid. The Appellant shall cooperate .. for the hearing so that the Authority shall complete the hearing within the period suggested ~~suggest~~ by Appellant as above. It is needless to mention that specific prayer of cross-examination is to be disposed of by a reasoned and speaking order while fresh adjudication is done and the Authority shall pass such order as it may consider proper in accordance with law.

7. In view of above observations, the Appellant deserves to be dealt in respect of its prayer for cross-examination in a fresh adjudication. Accordingly, we send the matter back to the original authority for fresh hearing following due process of justice.

8. Consequently, we direct that there shall be no further pre-deposit which is waived and stay application is disposed of remanding the matter to the Adjudicating Authority to do justice to the Appellant.

9. Ld. DR at this juncture states that time frame may be prescribed so that Revenue's interest shall not be prejudiced. We have no difficulty to come to rescue of Revenue in this regard. We can only state that after the two months period as aforesaid, as far as practicable within three months of completion of hearing, the Authority may pass the

order. The appellant should not seek adjournment since it is understanding of both sides today that they shall be governed by the time frame as above for re-adjudication.

10. In view of the order in the case of Principal Appellant as above, the appeals listed at Sr. 19, 20, 22, 23 and 24 of the cause list today shall also have the same consequence of waiver of pre-deposit with the remand of the matter to the adjudicating authority for fresh adjudication.

12. All the six stay Applications and Appeals are disposed in the aforesaid manner.

(Dictated & pronounced in open Court)

(D.N. Panda)
Judicial Member

(Mathew John)
Technical Member

RM