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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/1598/2010-1603/2010 - EX[DB] & E/78/2011-EX WITH E/S/1592-1597/2010 & E/S/100/2011-EX   Date **25/11/2011**

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

To :
M/S. SARASWATI PRODUCTS
18-85, GULAR NAKA, BANDA (UP)

M/S. SARASWATI PRODUCTS Appellant
Vs
C.C.E ALLAHABAD **STAY ORDER NO. 1291-1297/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.976-982/ 2011 EX[DB]** dated 23-11-11 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 (Haryana)
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

14. SH. PRABHAT KUMAR, ADV.,
B-51, BASEMENT,
SARVODAYA ENCLAVE,
N. DELHI-17

Assistant Registrar
(Excise Appeal Branch)

P.T.O.

15. M/S. TRIVENI CORPORATION
1[illegible]449, MARDAN NAKA, BANDA (UP).

16. M/S. S ENTERPRISES
18-397, MARDAN NAKA, BANDA (UP).

17. M/S. KAVERI PRODUCTS
68/12, GOOLER NAKA, BANDA (UP).

18. M/S. PRAYAG INDUSTRIES
302, NAZAR BAGH, BANDA (UP).

19. M/S. JAI GANGE INDUSTRIES
302, NAZAR BAGH, BANDA (UP).

20. M/S. SANGAM ENTERPRISES PROP.
SANJAY KUMAR SAHU, 18-397,
MARDAN NAKA, BANDA -UP

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH
COURT NO.3

E/Stay/1592-1597/10 in Appeal No.E/1598-1603/10
E/Stay/100/2011 in Appeal No.E/78/2011

(Arising out of Order-in-Original No.MP.(63/2008) 16 of 2010 dt.25.3.2010 passed by the CCE, Allahabad)

Date of Hearing/Decision: 22.11.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

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

M/s.Saraswati Products
M/s.S.Enterprises
M/s.Triveni Corporation
M/s.Prayag Industries
M/s.Jai Gange Industries
M/s.Kaveri Products
M/s.Sangam Enterprises

Appellant

Vs.

CCE, Allahabad

Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Shri Prabhat Kumar, Advocate

Present for the Respondent: Shri Sunil Kumar, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

STAY ORDER NO. 1291-1297/2011-EX
FINAL **ORDER NO.** 976-982/2011-EX

PER: ARCHANA WADHWA

After hearing both sides duly represented by Shri B.L.Narsimhan and Shri Prabhat Kumar, learned Advocates appearing for the appellants and Shri Sunil Kumar, learned SDR appearing for the Revenue, we find that some of the appellants have deposited some small amount in the present matters. However, as we are convinced that the order passed by the Commissioner in violation of principles of natural justice, we proceeded ahead to dispose of the appeals itself.

2. The charges against the appellants are that they have clandestinely removed the gutka and pan masala manufactured by them. At this prima facie stage, without going into the merits of the case, we find that such allegations were made against them on the basis of third party document recovered from M/s.Sangam Enterprises and M/s.Ganesh Traders and the statements recorded by the central excise officers during post recovery stage. It is seen that the appellants during the course of adjudication prayed for cross examination of the deponents and statements as also the various other persons. The said request made by the appellants stands dismissed by the Commissioner and the same was intimated to the appellants by Superintendent vide his letter dated 24.9.09 indicating that "*Request has been duly examined by the competent authority. Accordingly, the undersigned is directed to inform you that the request to cross examine the witnesses cannot be accepted.*" There is no discussion or reason given by the adjudicating authority for not accepting the appellants' request for cross examination. The intimation to the appellants ~~has~~ stands given ~~from~~ by the Superintendent in one line as regards denial of request for cross examination of the witnesses.

3. Subsequently, it is seen that the appellants have filed detailed reply to the show cause notice dealing with the allegations made in the notice and putting forth their defence. The appellants reiterated their request for cross examination reserving their right to provide the detail submission after cross examination.

4. It is seen that detailed reply by the appellant stands discussed by the adjudicating authority in the following manner:

"Regarding defence reply dated 15.09.09 submitted on behalf of the defendants, it is observed that instead of pointedly and specifically replying to the allegations of the sow cause notice, major part of it is concerned with request for cross examination of different persons in the instant case on extremely unconvincing grounds, the reasons why they were not granted the requisite permission for cross examination. Clearly, their request was deliberately made with a design to prolong and postpone their culmination of proceedings of adjudication, which has been rightly denied to them."

5. As rightly contended by the learned Advocate apart from above, there is no reference to the submissions made by the appellants in their detailed reply (which is almost running in 50 pages). The preceding paragraph in the said order refers to the allegations made in the show cause notice and evidences disclosed. The adjudicating authority has simpliciter adopted those evidences disclosed in the notice and has not at all dealt with submissions made by the appellants. We agree with the learned Advocate that in such scenario, it can be safely concluded that the impugned order stands passed by the Commissioner in gross violation of principle of natural justice. At this state, we also feel that the appellants' request for cross examination of the various witnesses was required to be considered in more serious manner rather than dismissing the

same in one line. As such, the said request requires to be re-considered in the light of the precedent decisions of the various authorities and if the adjudicating authority is of the view that the opportunity of cross examination is not required to be given, he is under legal obligation to give reason for the same and justification for such denial.

6. Shri Prabhat Kumar, learned Advocate appearing for the appellant M/s.Sangam Enterprises submits that quantification of the demand against them is not proper and specific averments to that effect was made before the adjudicating authority, who has not taken into account the same.

7. In view of the above discussion, we set aside the impugned order and remand the matter to the Commissioner for re-adjudication. The appellants shall be entitled to reiterate their request for cross examination, and Commissioner would decide the same in accordance with law and precedent decision of the various judicial and quasi judicial authorities. We make it clear that we are not expressing any opinion on the merits of the case.

8. All the stay petitions and appeals get disposed of in the above manner.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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