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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/220 /2011 - EX[DB] WITH E/S/261/11-EX Date **25/11/2011**

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

To :
M/S DCM SHRIRAM CONSOLIDATED LTD.
SHRIRAM NAGAR, KOTA (RAJASTHAN)

M/S DCM SHRIRAM CONSOLIDATED LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

STAY ORDER NO. 1298/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.986/ 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

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

Assistant Registrar
(Excise Appeal Branch)

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

Date of Hearing: 15.11.2011

E/Stay 261/11 in E/Appeal No.220/2011

(Arising out of order in original No. 45/2010-CE dated 26.10.2010 passed by the Commissioner of Customs & Central Excise, Jaipur)

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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 would 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 Department Authorities?	Yes

M/s DCM Shriram Consolidated Ltd — Appellants

Vs

CCE, Jaipur — Respondent

Appeared for the Appellant: Shri Amit Jain, Advocate
Appeared for the Respondent: Shri Nitin Pathak, DR

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

STAY ORDER No. 1298/2011-EX
FINAL ORDER No. 986/2011-EX

Per Archana Wadhwa:

After dispensing with the requirement of pre-deposit of duties, we proceed to decide the appeal itself in as much as the impugned order stands passed in violation of principles of natural justice.

2. Cenvat credit on service tax paid on GTA services for inward transportation of goods as well as outward transportation of final manufactured goods to depots stands denied to the appellant. It is seen that the appellant did not file reply to the show cause notice. Though the Adjudicating Authority fixed three dates for personal hearings, the appellants either sought adjournment or did not appear and accordingly the Adjudicating Authority confirmed the show cause notice.

3. From the impugned order, we find that the adjudicating authority has held in favour of the assesse on the legal issue, when he observed that "Therefore, in principle service tax credit in respect of GTA services for inward transportation of inputs is admissible, whereas in case of outward transportation, it is available on GTA services used up to the place of removal". However, he confirmed the demand on the ground that the appellant has not ~~been~~ substantiated availment of credit by production of documentary evidences.

4. Learned Advocate appearing on behalf of the appellants fairly concedes lapse on the part of the assesse in not filing the reply and not attending the personal hearings.

5. Though we find that the Commissioner has given ample opportunity to the appellant to defend themselves, but the fact remains that there is no reply on record in absence of which it is not possible for Tribunal to conclude the matter without factual verification. Accordingly we set aside the impugned order and remand the matter to the Commissioner for fresh adjudication. Needless to say, the appellant would be given opportunity to defend themselves and as suggested by the learned DR, a time limit of two months from the date of receipt of this order is fixed to put their defence, ~~on stay petition~~ Stay petion as also Appeal gets disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)