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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

Date **01/12/2011**

Appeal No. E/1098/2011 - EX[DB]
E/S/1369/2011

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

To :
M/S JCBL LIMITED,
(UNIT-I), AMBALA-CHANDIGARH ROAD, LALRU,
DISTT. MOHALI (PUNJAB)

M/S JCBL LIMITED, Appellant

Vs

C.C.E. CHANDIGARH Respondent

Stay order No. 1332/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.** 990/2011 **EX[DB]** dated 14-11-2011 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.V.LAKSHMI KUMARAN
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

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

Excise Appeal No. 1098 of 2011
Excise Stay Application No. 1369 of 2011

[Arising out of Order-in-Original No. 04/CE/CHD-II/2011 dated 1.2.2011 passed by the Commissioner, Central Excise, Chandigarh]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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. JCBL ~~Lab~~. Ltd — Appellants

Vs.

Commissioner of Central Excise
Chandigarh — Respondent

Appearance:

Shri B.L. Narsimhan, Advocate for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:

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

Date of Hearing/decision : 14.11.2011

STAY ORAL ORDER No. 1332/2011-EX

FINAL **ORAL ORDER NO. 990/2011-EX**

Per Archna Wadhwa :

After dispensing with the condition of pre-deposit of duty and penalties by taking into account precedent decision in the case of M/s. Audi Automobiles as reported in [2010 (249) ELT 124 (Tri-Del)], we proceed to depose of the appeal itself with the consent of both the sides. As per facts on record, the appellants herein is engaged in the manufacture of fabrication of bus bodies on the chassis supplied by their customers. They are also manufacturing bus and bus parts falling under Chapter 87 of Central Excise Tariff Act, 1985 and were availing the benefit of facility of Cenvat credit.

2. Dispute in the present appeal relates to the assessable value of the built on chassis and bodies cleared by the appellants. The appellants were paying duty on the said items by adding the cost of free supplied items by their customers to the job charges recovered by them. On the other hand, it is Revenue's contention that in terms of Rule 10A of the Valuation Rules, the price at which the fully built vehicle are sold from the depot of buyers to the ultimate customers should be the assessable value of the bus manufactured by the appellants. Accordingly, show cause notice dated 7.1.2010 was issued to the appellants proposing confirmation of short paid duty during April, 2007 to June, 2009. The said show cause notice stands confirmed by the Commissioner in his impugned order by

relying upon the Board's circular as also on some precedent decision of the Tribunal. He has also upheld the invokation of longer period of limitation.

3. Learned Advocate appearing for the appellants draws our attention to a letter dated 20.4.07 written by the appellants to the Assistant Commissioner, Central Excise Division, detailing therein the method adopted by them for arriving at the assessable value of the bodies cleared by them. He also draws our attention to another letter dated 25.6.2008 written by the Superintendent to the appellants wherein the subject of payment of duty under Rule 10A was raised. As such, he submits that the Revenue was in the knowledge of the entire facts, in which case the charges of suppression or mis-statement with malafide intention cannot be upheld against them.

4. Both the sides agree that common issue is involved of the same appellant, the Tribunal vide Final Order No. 833/2011 dated 16.9.2011 has remanded the matter, in the same sets of facts and circumstances, to the original adjudicating authority to reconsider the issue on limitation, in the light of the above correspondence. Both sides pray for remand of the matter.

5. In view of the above, we set aside the impugned order and remand

the matter for reconsideration in the light of the observations made by us in the earlier order referred supra. Both the stay petition as also appeal get disposed of in the above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*