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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/3458-3462/2010 - EX[DB] Date **01/12/2011**
E/S/3253-3257/2010
E/M/787-790,817/2011

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

To :
M/S SHANKAR PRODUCTS,

SH. ASHOK KUMAR GUPTA, PARTNER OF BEHIND
FACTORY NUMBER NO. 667, ROAD NO. 9F(2), V.K.
INDUSTRIAL AREA, JAIPUR.

M/S SHANKAR PRODUCTS, Appellant

Vs

C.C.E. JAIPUR I **Stay order No.1335-1339/2011** Respondent
Misc order No.700-704/2011

I am directed to transmit herewith a certified copy of **Final order No.** 996-1000/2011 **EX|DB|** dated 3.11.2011 passed by the Tribunal under **S ection 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 (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)

P.T.O

1. M/S MAHESH BOORA UDYOG,
SH. VISHNU SARDA, PROPRIETOR OF
A-405(3) ROAD NO.9F, V.K.INDUSTRIAL
AREA JAIPUR

2. M/S AGRAWAL & SONS
H-106,107, RIICO INDUSTRIA AREA
HEERAWAL KANOTA JAIPUR

3. M/S GOVIND BOORA BHANDAR
SH. MADHO BIHARIJI AGARWAL
PROPEIETOR OF 49, NATANIYO KI
MORI MISRA RAJAJI KA RASTA
JAIPUR

4. M/S RAMESHWAR UDYOG
SH. MUKESH AGRAWAL PROPRIETOR OF
ASHOK VIHAR HEERAWALA INDUSTRIAL
ARREA KANOTA JAIPUR

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

Date of Hearing : 3.11.2011

Coram:
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

Excise Misc. No. 787 of 2011, Excise Stay No. 3253 of 2010 and Appeal No. 3458 of 2010

[Arising out of Order-in-Original No. 23/2010(C.E) dated 5.8.2010 passed by the Commissioner (Appeals), Central Excise, Jaaipur)

M/s Shankar Products — Appellant

Vs.

CCE, Jaipur-I — Respondent

Excise Misc. No. 788 of 2011, Excise Stay No. 3254 of 2010 and Appeal No. 3459 of 2010

[Arising out of Order-in-Original No. 24/2010(C.E) dated 5.8.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Mahesh Boora Udyog — Appellant

Vs

CCE, Jaipur-I — Respondent

Excise Misc. No. 789 of 2011, Excise Stay No. 3255 of 2010 and Appeal No. 3460 of 2010

[Arising out of Order-in-Original No. 25/2010(C.E) dated 10.8.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Govind Boora Bhandar Appellant

Vs.

CCE, Jaipur-I Respondent

Excise Misc. No. 790 of 2011, Excise Stay No. 3256 of 2010 and Appeal No. 3461 of 2010

[Arising out of Order-in-Original No. 26/2010(C.E) dated 11.8.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Agrawal & Sons Appellant

Vs.

CCE, Jaipur-I Respondent

Excise Misc. No. 817 of 2011, Excise Stay No. 3257 of 2010 and Appeal No. 3462 of 2010

[Arising out of Order-in-Original No. 27/2010(C.E) dated 11.8.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s Rameshwar Udyog Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Appeared for Appellant : Shri A.R.M. Rao, Shri D.B. Bhattacharya & Shri R.K. Hasija, Advocates

Appeared for Respondent : Shri B.K. Singh, Jt. CDR

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

MISC ORDER No. 700-704/2011-EX
STAY ORDER No. 1335-1339/2011-EX
FINAL Order No. 996-1000/2011-EX..dated............

Per **Mathew John:**

In these proceedings five Misc. Applications and five stay petitions filed in five different Appeals by five different Appellants are being considered. The issue involved in all these Appeals are almost the same and that is the reason all these matters are being heard together

2. In the Misc. Applications the prayer is for early hearing of the stay petitions. All the Applications are allowed and stay petitions are taken up for immediate hearing.

3. The Appellants are engaged in the business of conversion of duty paid sugar into boora, mishri, makhana, patasha and similar items. The process of such conversion involves heating of sugar, removal of sludge from it and then re-moulding it into different shapes and forms. The issue contested in these Appeals are that such conversion process does not amount to manufacture and there is no case for any fresh levy of excise duty on these products. On the contrary, Revenue argues that the process amounts to manufacture and the products made by such process have distinct names, character and use and marketed as commodities different from sugar and no body who is interested in buying sugar will buy these products.

4. About classification of such products also there has been a dispute. The Appellants are contesting that the product will fall under

sub-heading 1701.91. On the other hand, Revenue is contesting that boora should be classified under Sub-Heading 1701.99 and certain other products like mishri, makhana are to be classified under 1704.90. Show Cause Notices were issued demanding duty based on the arguments of the Revenue regarding manufacture of new commodities and its classification as suggested by Revenue. These Show Cause Notices have been adjudicated confirming duty demanded along with appropriate interest. Further, penalties are imposed under Section 11AC and Rule 25 of the Central Excise Rules, 2002. The Appellants being aggrieved by such orders filed these Appeals along with stay petitions for waiving the dues arising from the impugned orders for admission of the Appeals.

5. The Counsel for the Appellants submits that this matter has been under dispute between the department and the manufacturers of such items. The manufacturers have been continuously representing to the Government that an additional levy of excise duty on a product which is manufactured out of simple process is not justifiable and if at all the products are dutiable for a second time notification under Rule 11C of the Central Excise Act waiving such dues should be issued. Since the matter was pending before CBEC the parties did not file replies and did not appear for personal hearing and the impugned orders are passed ex-parte.

6. The counsel submits that after considering the Appellant's representations the CBEC has issued Circular No. 879/17/08-CX.I dated 5.12.2008 in exercise of the power conferred on CBEC under Section 37B of the Central Excise Act, 1944. According to this circular the products are to be classifiable under tariff item No. 170191.00 which is the entry for refined sugar from which they start their processes. Since the orders were passed ex-parte, the Appellants could not point out this circular to the Adjudicating Authority and make submissions on that basis. He points out that weight of these items produced will be almost the weight of the raw material for which the process is started. Excise duties on both the products are prescribed per quintal of the product and that being the case if the circular of the board is implemented, they will be eligible for Cenvat credit of duty paid on new material and there will not be any differential duty to be paid.

7. The A.R. (Commissioner) fairly agrees that the adjudicating authority have not considered the instruction issued by CBEC in exercise of powers under Section 37B of the Central Excise Act, referred to by the Appellants and in view of this new development there is need for re-examining the entire matter.

8. Having considered the various aspects as stated above, we have come to the conclusion waiver of dues arising from the impugned orders can be granted for admission of the Appeals. Such waiver is granted and the Appeals are admitted.

9. Further, we are of the view that no purpose will be served by keeping these Appeals pending in Tribunal because these orders are passed without considering the order issued by the CBEC and the claim made by the Appellants for Cenvat credit duty paid on raw materials has to be examined afresh. Therefore, with the consent of both the sides, we set aside all the five orders and we remit the Appeals to the respective original authorities for deciding the matter afresh considering Board's Circular dated 5.12.2008 and any other legal submissions the Appellants may make. We are not passing any order on the merits of the claim made by either side. Accordingly, the impugned orders are set aside and the Appeals are allowed by setting aside the impugned order and remanding the matters, keeping all issues open to the respective adjudicating authorities for de-novo decision considering all relevant aspects and after giving opportunity to the Appellants to make their submissions in the matter.

10. The five Misc. applications, five stay Applications and five Appeals are disposed of accordingly.

(Pronounced in Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM