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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/1340/2011 - EX[DB] WITH E/S/1720/2011-EX   Date **07/12/2011**

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

To :
M/S PERFETTI VAN MELLE INDIA PVT. LTD.,
47TH MIE STONE, DELHI, JAIPUR HIGHWAY,
VILLAGE MANESAR, GURGAON (HARYANA)

M/S PERFETTI VAN MELLE INDIA PVT. LTD.,   Appellant

Vs

C.C.E. DELHI III   STAY ORDER NO. 1374/2011-EX.   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1006/ 2011 EX[DB]** dated 02-12-11 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 III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

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)

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

COURT NO. II

DATE OF HEARING : 25/11/11.

Excise Stay Application No. 1720 of 2011 in Appeal No. 1340 of 2011

M/s Perfetti Van Melle India Private Limited Appellant

Versus

CCE, Delhi Respondent

Appearance

Shri B.L. Narsimhan, Advocate – for the appellant.

Shri N. Pathak for Shri Sumit Kumar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

STAY ORDER No. 1374/2011-EX
FINAL Order No. 1006/2011-EX Dated : ____________

ORDER

Per. D.N. Panda :-

Learned counsel Shri Narsimhan submits that adjudication has been done with a pre-judged mind with the following remarks:-

> "The Central Government has power to make rules to provide for credit of duty paid on goods and credit of service tax paid on services used in or in relation to the

manufacture of excisable goods and similar powers are also given in Section 94 (2) (eee) of Finance Act, 1994 to make Rules to provide for credit in respect of goods and services used for providing taxable services **but there is no power** with the Government to make rules to provide for credit in respect of service tax paid on input services **which is used neither in or in relation to manufacture of excisable goods nor for providing taxable output services.**"

2. He specifically urges that challenging power of legislature which is not within the competence of Adjudicating Authority, that Authority acted like a writ court. He should have acted within the frame work of Finance Act, 1994 without exceeding his jurisdiction.

3. We have perused the paragraph aforesaid appearing in page 29 of the impugned order. We find that the Authority exceeded ~~proceeded~~ his jurisdiction commenting on legislature.

4. We dispense requirement of pre-deposit and remit back the matter for decision afresh against allegation in the show cause notice. Taking into consideration factual and legal pleading that shall be made by the appellant, as well as evidence brought on record, on the basis of law the Authority shall pass appropriate order. It would be proper to reproduce para 5 of the judgment of the Apex Court in Civil Appeal Nos. 2204-2247 of 1980 Decided on 05/05/1988 in the case of **Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Ors. Vs. Dharmendra Trading Company and Ors.** for guidance of the learned Adjudicating Authority as to acting within jurisdiction.

"5. The next submission of learned Counsel for the appellants was that the concessions granted by the said order dated 30th June, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of 30th June, 1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the state itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned Counsel is correct, the result would be that even the second order of 12th January, 1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and that is not even the case of the appellants."

5. We also propose to reproduce para 7 of the judgment of the Apex Court in the case of **Joint Commr. of Income Tax, Surat vs. Saheli Leasing & Industries Ltd.** reported in **2010 (253) E.L.T. 705 (S.C.)**, where a comprehensive guideline has been given by Apex Court as to the manner how the orders/judgment of the preceding should be written.

"**7.** These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case :-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

6. We hope that the authority while acting as a quasi-judicial authority shall have utmost regard to pronouncement of the Apex Court and pass appropriate order on the matter in controversy before him expeditiously.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK