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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/526 -528 /2011 & 911-912/2011 - EX[DB] Date **20/12/2011**
E/S/618-620 & 1118-1119/2011-EX

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

To :
M/S LAYCOCK ENGINEERS PVT. LTD.,

409, ANSAL'S MAJESTIC TOWER, G-17, COMMUNITY
CENTRE, VIKASPURI, NEW DELHI.
110018

M/S LAYCOCK ENGINEERS PVT. LTD., Appellant

Vs

C.C.E. DELHI II **STAY ORDER NO. 1476-1480/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.1030-1034/ 2011 EX[DB]** dated 08-12-11 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 II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.SOMESH ARORA,ADVOCATE
D-302, PLOT NO 13, SHUBHAM APARTMENTS, SECTOR-22, DWARKA, N DELHI-75

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)

15. SHRI VIKAS GARAG,

16. M/S. SIGN AT SITE,
3705/8, 1ST FLOOR,NARANG COLONY,
TRI NAGAR, DELHI

17. SHRI SAMJAY SETHI, DIRECTOR OF,
M/S LAYCOCK ENGINEERS PVT. LTD.,
409, ANSAL'S MAJESTIC TOWER, G-17, COMMUNITY CENTRE, VIKASPURI,
NEW DELHI.

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

19. CCE, DELHI-I

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. III

DATE OF HEARING : 01/12/2011.
DATE OF DECISION : 01/12/2011.

Excise Stay Application No. 618 & 620 of 2011 in Appeal No. 526 & 528 of 2011

M/s Laycock Engineers Pvt. Ltd. — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Stay Application No. 619 of 2011 in Appeal No. 527 of 2011

Shri Sanjay Sethi, Director — Appellants

Versus

CCE, Delhi – II — Respondent

[Arising out of the Order-in-Original No. 09/2010 dated 29/11/2010 passed by The Commissioner of Central Excise, New Delhi.]

Appearance

Shri Somesh Arora, Advocate – for the Appellants.

Shri S.R. Meena, Authorized Representative (DR) – for the Respondent.

and

Excise Stay Application No. 1118 of 2011 in Appeal No. 911 of 2011

M/s Sign At Site — Appellants

Versus

CCE, Delhi – I — Respondent

Excise Stay Application No. 1119 of 2011 in Appeal No. 912 of 2011

Shri Vikas Garg, Partner — Appellants

Versus

CCE, Delhi – I Respondent

[Arising out of the Order-in-Original No. 34/D-I/2010 dated 12/01/2011 passed by The Commissioner of Central Excise, New Delhi.]

Appearance

Shri Prabhat Kumar, Advocate – for the Appellants.

Shri S.R. Meena, Authorized Representative (DR) – for the Respondent.

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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 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

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order no. 1476-1480/2011-EX
FINAL Order No. 1030-1034/2011-Ex Dated : ____________

Per. Archana Wadhwa :-

After dispensing with the pre-conditions of deposit of duties and penalties, we proceed to decide the appeals itself in as much as the issue stands covered by the earlier decision of the Tribunal.

2. The appellants are in contract with M/s Indian Oil Corporation (IOC) for installation of retail visual identity (RVI) at various petrol pumps marketing their products. These are the Board's signs and other visual indicators which indicate to the customers from a distance that the products are being retailed in the said outlet of the company.

3. Proceedings are initiated against the appellant on the ground that such RVIs are classifiable under Chapter heading 9405 6090. These proceedings ~~were~~ resulted in passing of the impugned orders confirming demands of duties and imposing penalties.

4. Learned advocate appearing for the appellants draws our attention to the earlier final order No. 729-730/2011 – EX vide which, while dealing with an identical issue, the Tribunal had remanded the matter to the original Adjudicating Authority, subject to deposit of Rs. 40,00,000/- by the appellant. While remanding the matter, Tribunal has laid down guidelines to be followed in denovo adjudication proceedings. The same relate to the fact of manufacture and classification the various goods cleared for construction of the said RVI, as also for the cross examination of the various persons whose statements have been relied upon.

5. Learned advocate submits that the conditions of deposit of Rs. 40,00,000/-, in the earlier order, while remanding the matter to the original Authority may not be proper and just, in as much as the Hon'ble Delhi High Court in the case of **Satvik Industries vs. CCE, Delhi – II** reported in **2010 (252) E.L.T. 182 (Del.)** has held that the setting aside of the impugned orders and remanding the matter with direction of pre-deposit is not appropriate in as much as once the adjudication order is quashed, condition of deposit is not imposable. As such, he submits that the matter be remanded without any direction of pre-deposit.

6. Countering the above arguments learned DR appearing for the Revenue submits that in as much as the earlier order is being followed, the same should be followed in totality and the directions made in the earlier order should also be adopted in the present cases. As such, he submits that the appellant should be made to deposit a part amount before remanding the matters.

7. After appreciating submissions made by both the sides, we note that the present matters have to be remanded to the original Adjudicating Authority for fresh decision, in the light of the guidelines laid down by the Tribunal in the earlier matters. Further, we also note that learned advocate has raised a submission that they do not have any factory and all the items were procured by them from other manufacturers. We further note that as per the statement of representative of IOC, the same is to the effect that they were visiting the manufacturing

premises to inspect the items. This stand clarified by the learned advocate that the reference in the said statement is not to their factory premises but to the premises of other manufacturers, from whom the appellant was buying the goods. In any without expressing any opinion on the above issue, we find that the same is a fact requiring examination by the Adjudicating Authority. Further, the persons giving statements are required to be presented for cross examination, as held by the Tribunal in the earlier identical matters.

8. At this stage, we agree with the learned advocate that in terms of declaration of law by Hon'ble Delhi High Court in the case of **Satvik Industries vs. CCE, Delhi – II** (supra), the pre-deposit of even a part amount is not required to be made, once the impugned order is being set aside in as much as the order confirming demand of duty and imposing penalty becomes not 'non-est'. As such, we are of the view that the appeals are required to be remanded without putting the appellants to any condition of pre-deposit. Accordingly, after allowing this stay petition unconditionally, we set aside the impugned order and remand the matter to original Adjudicating Authority for fresh decision, after following the guidelines laid down in the earlier order of the Tribunal in the case of **AVI Plast vs. CCE, Delhi – I** (supra). Stay petitions as also appeals are disposed of, in above manner.

9. At this stage, learned advocate Shri Prabhat Kumar submits that the appeal of Site at Sight is also identical to the appeal of

M/s Laycock Engineers Pvt. Ltd. with the difference that they were also doing the work with M/s BPCL. He also submits that they do not have any manufacture unit. In fact, he submits that appellants were paying service tax on the work contract between entered with M/s IOCL and BPCL.

10. In as much as the appeal of M/s Laycock Engineers Pvt. Ltd. stands remanded, by adopting the same criteria, we set aside the impugned order in the present case also, after allowing the stay petition and remand the matter to original Adjudicating Authority for fresh decision in the light of the judgment of the Tribunal in the case of **AVI Plast** (supra).

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

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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