TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1461/2011 - EX[DB] WITH E/S/1864/2011-EX Date **19/12/2011**

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

To :
NEPA LTD
NEPANAGAR, DISTT- EAST NIMAR(MP)
450221

NEPA LTD Appellant
Vs
C.C.E. INDORE **STAY ORDER NO.** 1555/2011-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.1049/ 2011 EX|DB|** dated 14-12-11 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.C.HARISHANKAR
46, BANK ENCLAVE,DELHI-110092

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)

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

Excise Appeal No. 1461 of 2011
Excise Stay Application No. 1864 of 2011

[Arising out of Order-in-Appeal No. IND/113/2011 dated 8.3.2011 passed by the Commissioner of Central Excise, (Appeals), Indore]

For approval and signature:

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

---

M/s. Nepa Ltd. — Appellants

Vs.

Commissioner of Central Excise Indore — Respondent

Appearance:

Shri S.Sunil, Advocate for the Appellants
Shri N.Pathak, SDR for the Respondent

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

Date of Hearing/decision : 30.11.2011

STAY ORAL ORDER No. 1555/2011-EX
FINAL **ORAL ORDER NO. 1049/2011-EX**

Per Archana Wadhwa (for the Bench):

After hearing both side duly represented by Shri S.Sunil, learned advocate for the appellants and Shri N. Pathak, DR for the revenue, we proceed to decide the stay petition as also the appeal itself as the issue stand decided in the same appellants' case by the earlier order of the Tribunal.

2. As per facts on record the appellants are engaged in the manufacture of Newsprint falling under heading 48.01 of Central Excise Tariff Act, 1985. The appellants supplied newsprint to the customers other than newsprint establishments. Such newsprint is supplied in reams and were classified under sub-heading No. 4801.90 and they paid by paying Central Excise duty at 10% Adv. However, the department was of the view that the appellants are not entitled to the benefit of Notification No. 60/88-CE dated 1.3.88 and that the goods are liable to duty not under sub-heading No. 4801.90 but under heading No. 48.02 attracting 20% duty. Hence, the department issued seven show cause notices, in 1996 and 1997 to demand a duty of Rs.2,63,536/-. The matter was adjudicated by the Adjudicating authority who confirmed the duty of Rs.2,63,536 and imposed penalty of Rs.5000/- on the appellants. The appellants aggrieved by the order in original passed by the

adjudicating authority filed the appeal before the Commissioner (Appeals), who vide order-in-original IND-1/113/2004 dated 12.3.2004, set aside the Order-in-original dated 29.11.2002 and allowed the appeal. Against the aforesaid order passed by the Commissioner (Appeals), the department filed an appeal before the CESTAT, the same was decided by the Hon'ble Tribunal vide final order No. 205/08 dated 11.4.2008, whereby the Commissioner (Appeals) order was set aside and the Order in original was restored. The appellant could not appear before Tribunal when case was posted for hearing, they had filed an application for recalling an ex-parte order dated 11.4.2008 (supra). Hon'ble Tribunal dismissed ~~of~~ above application on merits vide Misc. order No. 759/08-CX dated 06.8.2008, as under:

> "We find that as per the Central Excise Tariff Heading No. 48.01 covers new print in rolls of sheets and as per the Chapter Note 3 of Chapter 48 of the Tariff "News prints" means paper intended for printing of a newspaper. In the present case, as the paper in question, was cleared to such organisations, which are not printer of newspaper hence the paper was not intended for printing of a newspaper. Therefore, we find no merit in the contention of the applicant and find no ground to recall our final order. The application is dismissed."

Being aggrieved by the aforesaid order of the Tribunal, the appellant filed an appeal before Hon'ble High Court of M.P. and also approached High Power Committee for its clearance (COD clearance) to proceed further in this matter. However, the committee vide its order dated 12.1.2010 rejected the request of the Appellant and directed the Department to look into the merits of the issues raised by the company and re-adjudicate the matter.

3. In terms of the above directions, the adjudicating authority took up the matter again and confirmed the duty of Rs.2,63,536/- against the appellant alongwith confirmation of interest. However, no penalty was imposed. The said order of the Assistant Commissioner was appealed against by the appellants before Commissioner (Appeals) who upheld the same. We find that the earlier order of the Tribunal in the case of CCE Indore vs. Nepa Ltd. as reported in [2008 (232) ELT 485 (Tri-Del)] is in respect of the same appellant and same very seven show cause notice. Whereas the Tribunal has allowed the Revenue's appeal along with rejection of subsequent application for recalling of the matter, the issue should have been considered as having attained finality. The said order was appealable only before High Court and could have been set aside by the higher appellate forum. It is seen that the assessee filed an appeal before Hon'ble High Court of MP and simultaneously approached the High powered Committee for obtaining the necessary clearance. However, the Committee rejected the request of the assessee but directed the department to look into the merits of the issue and to readjudicate the matter.

4. In our view, once the issue stands settled by the Tribunal, the directions of the COD to the original adjudicating authority to look into

the matter afresh were not called for. However, without commenting upon the same, we note that the issue stands decided at the Tribunal's level vide which the order of the original adjudicating authority was restored. Inasmuch as the issue stands decided, we find no reasons to interfere in the present impugned orders of the lower authorities. The appeal is accordingly, rejected. Stay petition also gets disposed of.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

ss