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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/2135/2009-2136/2009 - EX[DB] Date **17/02/2012**

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

To :
M/S RAJASTHAN EXPLOSIVES & CHEMICALS LTD.
MACHKUND, DHOLPUR, (RAJASTHAN)

M/S RAJASTHAN EXPLOSIVES & CHEMICALS LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/175-176/ **2012 EX[DB]** dated 31-1-12 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SH. P.C. JAIN, ADV, C/o SH. RAJESH KUMAR, ADV,
24-A, DDA, SFS FLAT,
MOUNT KAILASH, EAST OF KAILASH,
N. DELHI-65

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-3
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
14. SH. RAJESH JAIN,
154, RAJPUR ROAD, JAKHAN,
OPPOSITE SCHOLAR HOME, DEHRADUN-248001.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:24.01.2012
Date of decision:24.01.2012

In Excise Appeals Nos.2135-2136 of 2009

[Arising out of Order-in-Original No.21/2009(C) Commr. Dated 5.5.2009 passed by the Commissioner of Central Excise, Jaipur-I].

(1)M/s. Rajasthan Explosives & Chemicals Ld. (2)Shri Rajash Jain	Appellant
Vs.	
CCE, Jaipur-I	Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Technical)

1. Whether Press Reporters may be allowed to see 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?	Yes
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.

Appearance: Rep. by Shri P.C. Jain, Advocate for the appellant.
Rep. by Shri S.K. Panda, Jt.CDR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Technical)

FINAL Order No. A/175-176/2012-EX(BR)/Dated:24.01.2012

Per Archana Wadhwa:

Vide Stay Order No.273-274/2010-Excise dated 19.04.2010, the appellant was directed to deposit the entire amount of duty, interest and penalty within a period of 8 weeks from that date, in terms of the provisions of Section 35 F of the Central Excise Act, 1944. It is seen from the record that subsequently when the matter came up for ascertaining the compliance with the above order, it was noticed by the Bench that the pre-deposits, as directed, have not been made. Accordingly, vide order dated 9.8.2010, the appellant was called upon to show cause as to why their appeal should not be dismissed for non-compliance with the stay order. Subsequently, the same was listed on 20.09.2010.

2. It was noticed that as the appellant had not complied with the said order, and had filed a writ petition before the Hon'ble High Court of Rajasthan, the Tribunal has observed that as the matter is fixed before the High Court on the same date, they will refrain from passing any order on the maintainability of the appeal. The matter was accordingly listed on 22.11.2011. On 22.11.2011, the Tribunal took note of the Rajasthan High Court's order passed on 21.10.2010 and the stay matter was listed for

ascertaining compliance on 10.1.2011. Thereafter, it has came on record number of times. On 25.2.2011, it was noticed that the writ petition filed before the High Court stands dismissed with extension of time upto 31.12.2010. However, as the appellant intimated the fact that a review petition stands filed before the Hon'ble High Court as well as SLP was filed before the Hon'ble Supreme Court against the order of the Hon'ble High Court, the bench took note of the above fact and issued notice to the appellant to satisfy as to why the appeal should not be dismissed. The matter was accordingly listed on 25.4.2011.

3. In reply to the above notice given by the Bench, the appellant filed reply on 21.4.2011 and made a prayer to re-consider the stay order passed by the Tribunal on 19.04.2010. The said prayer was on the financial condition of the appellant and the subsequent development having taken place, after passing of the stay order by the Tribunal. Considering the said application, the Tribunal on 25.4.2011 directed the department to verify the contentions sought to be raised in the application and to file a reply thereto.

4. Accordingly, Revenue filed a reply on 6.7.2011. The Commissioner vide his said reply contested the appellant's prayer for reconsideration by submitting that no new facts have come to their notice after passing of the impugned order and the appellant having committed a serious offence, the

directions of the Tribunal to deposit the amounts in question were appropriate and just.

5. In reply to the above facts submitted by the Commissioner, the appellant have now filed a reply on 9.1.2012. It stands submitted by them that the Commissioner has not contradicted any of the pleas taken by them in respect of their financial position. Elaborating on the arguments, ld. Advocate submits that subsequent to the passing of the stay order, their licence stands suspended by the Chief Controller and as a result, their manufacturing activities in the factory was stopped w.e.f. 30.08.2010. However, he fairly agrees that such suspension was subsequently revoked and the factory has started working again on 20.10.2011. As a result of the above development, their accounts in the bank were also frozen and they were not in a position to operate their current accounts. He submits that their accounts continued to remain frozen till date. He has also drawn our attention to the various other facts like agreement between the management and the staff requiring the appellant to continue to pay 95% of their monthly salary during the period of suspension, delay in payment of statutory dues of service tax, P.F. , ESI, security charges, power bills, etc. He has also drawn our attention to the fact of invocation of bank guarantee by the suppliers and reference to un-secured licence stand made as also to the fact that there is no

cash balance. He also submits that the appellant has already deposited an amount of Rs.28 Lakhs approximately during the month of December, 2011 and Jan., 2012. Keeping in view the above facts, ld. Advocate makes a prayer for modification of the stay order and for considering the deposit already made by them as sufficient for the purpose of Section 35 F.

6. Countering the arguments, ld. Jt. CDR submitted that the stay order passed by the Tribunal was put to challenge before the Hon'ble Rajasthan High Court. The petition filed by the appellant stands dismissed vide Order dated 21.10.2010. The Hon'ble High Court has passed a detailed order observing that no infirmity stands found in the stay order of the Tribunal and the petition filed by the appellant is devoid of any merits. The fact of the seizure of the bank account was also taken into consideration as also the appellant's plea that they may not be in a position to make the payment of the dues. After taking into account the financial difficulty pleaded and other facts, the Hon'ble High Court rejected the petition but extended the period by 10 weeks from the date of passing of the order, to deposit the amount in question.

8. The said order of the Hon'ble High Court was challenged before the Apex Court, who dismissed the SLP filed before them. As such submits the ld. Jt. CDR that the matter having travelled upto the Supreme Court and the

modification of the same by the Tribunal cannot be done. If the appellants are aggrieved with the order and of the view that there are some subsequent developments as regards their financial position, they are required to approach the Higher forum for modification of the orders. The order of the High Court extending the period to deposit cannot be modified by the Tribunal as we have no jurisdiction to do so.

11. We accordingly reject the prayer for such modification inasmuch the period to deposit the directed amounts in terms of the Tribunal's stay order as extended by the Hon'ble High Court already stands expired , we deem it fit to dismiss the appeal for non-compliance with the provisions of Section 35 F of the Central Excise Act read with the orders referred supra. We order accordingly. Both the appeals are dismissed.

[Order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Sahab Singh)
Member (Technical)

Ckp.