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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/1321/2011 - EX[DB] ,E/S/1698/2011-EX   Date **21/02/2012**

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

To :
M/S VINAYAK AGROTECH LTD.,
E-158, ROAD, NO 12, VKI AREA, JIPUR RAJASTHAN

M/S VINAYAK AGROTECH LTD., Appellant

Vs

C.C.E. JAIPUR I Respondent

STAY ORDER NO. 291/12-EX.

I am directed to transmit herewith a certified copy of **Final order No. A/185/ 2012 EX[DB]** dated 15-2-12 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
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3

E/Stay/1698/2011 in Appeal No.E/1321/2011

(Arising out of OIA no.64(DKV)CE/JPR-I/2011 dt.22.02.11 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 07.02.2012

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Vinayak Agrotech Ltd. — Appellant

Vs

CCE, Jaipur-I — Respondent

Present for the Appellant: Shri Bipin Garg, Advocate
Present for the Respondent: Shri S.K.Panda, JCDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

STAY ORDER NO. 291/2012-EX (BR)
FINAL **ORDER NO.** A/185/2012-EX(BR)

PER: ARCHANA WADHWA

After dispensing with condition of pre-deposit of duty and identical amount of penalty of Rs1,25,158/-, we proceed to decide the appeal itself with the consent of both sides as the issue involved is in a narrow compass.

2. The benefit of notification No.8/03-CE dt.1.3.03 stands denied to acid oil/sludge of palm oil emerged in the manufacture of refined oil. The said benefit stands denied on the ground that during the preceding financial year, the appellants have cleared the goods exceeding Rs.4 crores from the factory. As such, they have not been extended the benefit of Notification No.8/03-CE for the next financial year.

3. Learned Advocate appearing for the appellant does not dispute the legal finding arrived at by the lower authorities. However, he submits that there is another notification No.89/95-CE dt.18.5.95 which exempted waste and scrap arising in the course of manufacture of exempted goods. However, he fairly concedes the benefit of said notification was not claimed either before the adjudicating authority or before the Commissioner (Appeals).

4. In view of the above, we set aside the impugned order and remand the matter to the original adjudicating authority to examine the applicability of the above notifications in question. The stay petition also appeal gets disposed of in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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