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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/1987/2011 - EX[DB]
E/S/2628/2011-EX

Date **20/01/2012**

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

To :
M/S AUREOLA CHEMICALS LTD.
PLOT NO. 33, SECTOR-II, PITHAMPUR. (M.P.)

M/S AUREOLA CHEMICALS LTD. Appellant

Vs

C.C.E. INDORE Respondent

STAY ORDER NO. 103/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.32/ 2012 EX[DB]** dated 18-1-12 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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/2628/11 in Appeal No.E/1987/11

(Arising out of Order-in-Appeal No.IND/159/2011 dt.30.3.11 passed by the CCE(A), Indore)

Date of Hearing/Decision: 06.01.2012

For approval and signature:
Hon'ble Mrs.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.Aureola Chemicals — Appellant
Vs
CCE, Indore — Respondent

Present for the Appellant: Shri Ramesh Nair, Advocate
Present for the Respondent: Shri Sumit Kumar, SDR

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

STAY ORDER No. 103/2012-EX (BR)
FINAL **ORDER NO.** A/32/2012-EX (BR)

PER: ARCHANA WADHWA

After dispensing with condition of pre-deposit of duty, we find that the appeal itself can be decided at this stage. We find that the Commissioner (Appeals) has not dealt with the appellants' contentions as regards disputed issue.

2. The appellants have entered into an agreement with Hindustan Lever Limited for manufacture of LABSA on job work basis. The total job charges for processing of LABSA charged from M/s.Hindustan Lever Limited ~~at~~ were Rs.2,300/- per MT. Out of Rs.2,300/-, Rs.627/-, were being the actual conversion charges, and balance is as cost of sulphuric acid being used by the appellant in the manufacture of LABSA.

3. The dispute relates to this amount of conversion charges of Rs.627/-, being charged by the appellants from M/s.Hindustan Lever Limited. As per the Revenue, the conversion charges were examined from the trial balance of the noticee during the period 2004-05, they were found to be as Rs.1240/- per MT. As such, the Revenue enhanced the assessable value of LABSA by adding Rs.1,240/- as conversion charges in~~asmuch as~~ instead of Rs.627/- being received by the appellants. Accordingly the demands were raised and confirmed.

4. From the impugned order of the Commissioner (Appeals), we find that he has disposed of appeal by merely following the earlier decision of the Tribunal in the case of CCE, Indore vs. Aureola Chemicals Ltd.-2006 (206) ELT 311 (Tri.-Del.), which already stands decided against the appellant, in their own case, in terms of the above judgement of the Tribunal. Accordingly, by following the same, he rejected the appeal.

5. We find that the issue involved in the above decision of the Tribunal relates to the fact as to whether the cost of by-product/waste, emerging in the assessee's factory was required to be

taken into account for reduction in the value of the goods manufactured or not. As such, we find that the issue involved in the present appeal is entirely different from the issue involved in the earlier decided case. Probably, the Commissioner (Appeals) has gone into one of the observations made in the earlier decision which is to the effect that – *"for assessment of sulphuric acid, cost of inputs plus processing charges to be taken into consideration."* We find that there is no dispute about this. Admittedly, the cost of inputs plus processing charges are to be taken for arriving at the assessable value of the goods manufactured on job work basis.

6. The dispute in the appeal relates to quantum of processing charges, whereas the appellants have claimed the same to be Rs.627/- per MT of LABSA, the Revenue enhanced the same to Rs.1,240/- per MT. The appellants' contention is that the cost stands arrived by the Revenue based upon the figures of trial balance which do not reflect the correct figures. Learned Advocate appearing for the appellants submits that inasmuch as only Rs.627/- were being charged from M/s.Hindustan Lever Limited and nothing more than that was being paid by M/s.Hindustan Lever Limited, the Revenue had no justification to examine to the said fact inasmuch as there is no dispute to the fact of the job work quantum agreed upon between the appellant and M/s.Hindustan Lever Limited.

7. In any case, we find that the Commissioner (Appeals) having disposed of the appeal based upon the precedent decision of the Tribunal, which is not on the issue involved in the present appeal and

the appellate authority have not given any finding on the dispute issue. We find that the Commissioner (Appeals) order is liable to be set aside and the matter to be remanded to the appellate authority for fresh decision by considering each and every plea of the appellants and giving finding thereon.

8. We accordingly set aside the impugned order and remand the matter to the Commissioner (Appeals) for de novo decision in view of the above observation made by us.

9. The stay petition as also appeal stands disposed of in the above terms.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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