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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

Date 07/02/2012

Appeal No. E/462 /2011 - EX[DB] , E/S/540/2011-EX

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

To :
MR. JAG MOHAN SINGH, PARTNER,
S.J. INDUSTRIES, C-15, GREEN PARK, KASHIPUR BYE PASS ROAD, RUDRAPUR, UDHAMSINGH NAGAR, UTTRAKHAND.

MR. JAG MOHAN SINGH, PARTNER, Appellant

Vs

C.C.E. DELHI II Respondent

STAY ORDER NO. 191/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/121/ 2012 EX|DB|** dated 03-2-12 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. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult
MR.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 17.11.2011

Excise Stay No. 540 of 2011 and Excise Appeal No. 462 of 2011

{Arising out of Order-in-Appeal No.673-674/CE/APPL/D-II/2010 dated 2.11.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Delhi-II}

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

1.	Whether Press Reporter 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?	Yes
3.	Whether their 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

Jag Mohan Singh, Partner of M/s S.J. Industries — Appellant

Vs.

CCE, Delhi — Respondent

Appearance

Appeared for Appellant : Shri Kapil Vaish, C.A.

Appeared for Respondent : Shri I. Baig, DR

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

STAY order No. 191/2012-EX(BR)
FINAL Order No. A/121/2012-EX(BR) dated............

Per **Archana Wadhwa:**

After dispensing with the condition of pre-deposit, we proceed to decide the appeal itself inasmuch as we find that the original adjudicating authority has passed the impugned order in gross violation of the principles of natural justice.

2. Ld. Advocate has drawn our attention to a letter dated 23.1.2009 issued from the office of the Assistant Commissioner clarifying that all the documents relied upon in the Show Cause Notice stands collected by the Appellant on 20.1.2009. There is further direction in the said letter to cause appearance before the adjudicating authority on 27th or 28th or 29.1.2009. Ld. Advocate submits that the said letter dated 23.1.2009 was received by them on 24th Jan. ~~and~~ as 24th Jan. was Saturday and 25th was Sunday, 26th Jan was National Holiday on account of Republic Day. Accordingly, he submits that said letter was received on 27th and the appellant appeared before the Joint Commissioner on 29.1.2009. All the above facts were brought to his notice and it was prayed that as the time given was very short and the documents are bulky, therefore reply to the show cause notice could not be finalised and accordingly he prayed for a period of four weeks time to file the reply. However, the said request of the appellant was not acceded to by the original adjudicating authority and the order was passed on 30.1.2009 itself, without waiting for the reply to be filed. As such, he submits that the impugned order confirming the demand of duty against the appellant

imposing penalty stand passed by the adjudicating authority in the absence of defence submissions as also without affording an opportunity of effective personal hearing to the appellant.

3. Countering the arguments, ld. DR appearing for the Revenue submits that as is clear from the said letter dated 23.1.2009, four personal hearing dates were fixed before deciding the matter. The appellant sought adjournment on each and every date and did not file any reply to the show cause notice. He further submits that all the submissions were made before the Commissioner (Appeals), who has taken into account all the relied upon documents and the appellant's submissions and has granted some partial relief also. He submits that the order impugned before Tribunal is that of Commissioner (Appeals) who has considered all the relied upon documents and as such non supply of the same to the appellant and non consideration of the same by the original adjudicating authority will not make much difference.

4. After appreciating submissions made by both the sides, we do not agree with the ld. DR that once Commissioner (Appeals) has decided the issued based upon the relied upon documents, the contravention of principles of natural justice by the original adjudicating authority ~~does~~ ~~not~~ gets ~~scared~~ cured. The principles of natural justice are required to be observed at each and every level of adjudication. This is settled principles of law and any arguments against the same cannot the appreciated and upheld.

5. We would like to re-produced the letters dated 23.1.2009 addressed by office of the original adjudicating authority

> "Sub:- Central Excise case against M/s S.J Industries
>
> Please refer to the subject Show Cause Notice No. IV(Hqrs. Prev.)/35/D-III/07 dated 12.3.2008 requiring you to file reply in this office within 30 days after receipt of the Show Cause Notice.
>
> Four opportunities of personal hearing were fixed to you on 7.10.08, 4.11.08, 25.11.08 and 20.01.09. On 20.01.09 you have collected all the RUD's of SCN as desired. You are once again requested to appear before Jt. Commissioner of Central Excise, Delhi-II in his Room No. 128, 1st floor, C.R. Bld. I.P. Estate, New Delhi on 27th or 28th Or 29th January 2009 at 10.30 hrs. in person or your authorised representative. If appear on the given dates and time for personal hearing the case may be decided ex. parte on the basis of record available in this office without any further reference to you."

6. As is clear from the above four dates, hearing were fixed by the adjudicating authority before the supply of the relied upon documents and as such it can be safely concluded that the same were not effective hearing in dates. When the appellant was repeatedly asking for supply of relied upon documents and the same stands supplied only on 20.1.2009, as is clear from the above letter and thereafter without granting sufficient time for preparation of the reply, ~~heard~~ fixing three in dates ~~and~~

as next 27^{th}, 28^{th} or 29^{th} of Jan. 2009, the adherence to principles of natural justice cannot be said to have been made. This specifically when the succeeding three dates were holidays and the appellant brought the above fact to the notice of the original adjudicating authority vide his letter dated 29.1.09. In these circumstances, it would have been proper for the adjudicating authority to give some more time to the appellant to file the detailed reply to the notice and to grant another opportunity of hearing to him instead of going ahead with the adjudication of the matter. In these circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority for fresh decision. The appellant's prayer for supply of non-relied upon documents and cross examination may also be considered by the adjudicating authority to whom the matter is being remanded.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM