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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/2806/2010 - EX[DB]

Date **29/03/2012**

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

To :
M/S K. P. POUCHES PVT. LTD.
PLOT NO 19A, IST FLOOR, ROOM NO 1, MANOHAR PARK, MAIN ROHTAK ROAD, RAM PURA, N DELHI. 110026

M/S K. P. POUCHES PVT. LTD. Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/373/ 2012 EX[DB] dated 26-3-12 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 I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult SH. K.K. ANAND, ADV, C/E APPELLANTS, (NO VAKALATNAMA IN THE FILE)

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.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 26.3.2012

Central Excise Appeal No.2806, 2808 , 2809, 2810 of 2010, 323 and 461 of 2011

Arising out of the order in original No.59/PKJ/CCE/ADJN/2009 dated 30.11.2009 passed by Commissioner, Central Excise (Adjn.), New Delhi.

For Approval and Signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

1. M/s K.P. Pouches Pvt. Ltd.
2. Shri R.P. Tripathi
3. Shri Rajinder Gaur
4. M/s Supreme Trading company
5. M/s Supreme Road Transport (P) Ltd.
6. Shri Ravi Singhal

.. Appellants/applicants

Vs.

C.C.E., Delhi I .... Respondent

Present Shri K.K. Anand, Advocate for the appellants
Present Shri Bharat Bhushan, A.R. for Revenue

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL Order No. A/373/2012-EX(BR)

Per Justice Ajit Bharihoke:

The appellants M/s K.P. Pouches Pvt. Ltd. , Shri R.P. Tripathi, Shri Rajinder Gaur, M/s Supreme Trading Company, M/s Supreme Road Transport (P) Ltd. filed appeals against a common order of Commissioner (Adjudication) dated 30.11.2009 whereby the adjudicating authority confirmed the demands of central excise amounting to Rs.12,61,64,609/- plus Rs.12,05,868/- against the appellant M/s K.P. Pouches Pvt. Ltd. besides penalty of Rs.12,73,70,477/-. The adjudicating authority also imposed penalty of Rs.1 crore each on the appellants Shri R.P. Tripathi, Shri Rajender Gaur, Directors of M/s K.P. Pouches Pvt. Ltd. besides penalty of Rs.1.50 crores upon M/s Supreme Road Transport (P) Ltd., Rs.1 crore on Shri Ravi Singhal, Director of M/s Supreme Road Transport (P) Ltd. and Rs.50,000,00/- upon M/s Supreme Trading Company.

2. Feeling aggrieved, the appellants filed separate appeals against the impugned order along with stay applications seeking waiver of the condition of pre-deposit of demand and penalty as a condition for hearing of appeals. The stay applications were disposed of by a common order dated 8.12.2011 with the following observations:-

> ***" Keeping in view the facts and circumstances of the case, and guidelines issued by the Apex Court in the matter of calling for pre-deposit under Section 35F of the Central Excise Act in Benara Valves Ltd. vs. C.C.E. reported in 2006 (204) 513 (SC), the main applicant M/s K.P. Pouches is directed to deposit Rs.5 crores within a period of 12 weeks. On deposit of above amount, balance of dues from all the applicants shall be waived and recovery of same shall be stayed during pendency of the appeals. If such deposit is not made, all the appeals are liable to be rejected without further notice to the applicants".***

All the appellants were given time for compliance to be reported on 15.3.2012.

3. The above referred order dated 8.12.2011 however was not complied with, thus, on request of Shri V.K. Agrawal, Advocate for the appellants, time to deposit Rs.5 croers was extended by a week despite of indulgence shown by the Tribunal, the main appellants M/s K.P. Pouches (P) Ltd. has not complied with the direction for deposit of Rs.5 crores. The appeal of M/s K.P. Pouches Pvt. Ltd. being Appeal No.E/2806/2010, therefore, stands dismissed in view of the provision of Section 35F of the Central Excise Act, 1944.

3. Shri K.K. Anand, Advocate appearing for the appellants submits that perusal of the order of the Tribunal dated 8.12.2011 would show that the direction for deposit of Rs.5 crore was given only to the main appellant M/s K.P. Pouches who has failed to comply with the direction. It is submitted that M/s K.P. Pouches Pvt. Ltd. is a company and it is not within the control of the other appellants, as such, they cannot be penalized for default on the part of M/s K.P. Pouches (P) Ltd. The learned Counsel thus concludes that even if the appeal of M/s K.P. Pouches Pvt. Ltd. is dismissed for non-compliance of the condition of Section 35F of the Act, the appeals of the other appellants against penalties imposed on them be heard without insisting of pre-deposit by them.

4. Shri Bharat Bhushan, A.R. for the respondent refuting the argument submits that the order of the Tribunal dated 8.12.2011 is a conditional order and the pre-deposit of penalty amounts by the other appellants stands waived only in the event of deposit of Rs.5 crores by M/s K.P. Pouches Pvt. Ltd. Since M/s K.P. Pouches Pvt. Ltd. has not complied with the aforesaid direction, the other 5 appellants are required to pay the amount of penalties imposed upon them as a pre-

condition for hearing of their appeals in Section 35F of the Central Excise, 1944.

5. We have considered the rival contentions and perused the order of the Tribunal dated 8.12.2012 particularly para 19 of the order which is reproduced above. On plain reading of the operative part of the order, it is clear that the Tribunal while deciding the stay applications passed a conditional order giving time to M/s K.P. Pouches Pvt. Ltd. to deposit Rs.5 crores as a pre-condition for hearing of the appeals. However, the Tribunal also made it clear that the condition of pre-deposit in respect of other appellants and balance amount confirmed against M/s K.P. Pouches Pvt. Ltd. shall stand waived in the event of deposit of Rs.5 crores, otherwise all the appeals would be liable to be rejected without further notice. Thus, it is evident that once M/s K.P. Pouches Pvt. Ltd. failed to deposit the amount of Rs.5 crores, other appellants before the Tribunal ought to have deposited the amount of penalties imposed upon them which has not been done. Thus, their appeals cannot be heard. However, instead of dismissing their appeals, in the interest of justice, we grant one week time to the other 5 appellants to deposit the amount of penalty respectively imposed upon them.

6. In view of the above, appeal of M/s K.P. Pouches Pvt. Ltd. being Appeal No.E/2806/2010 stands dismissed. Other appeals be listed on 3.4.2012 for compliance.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/