

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/746 /2005 - EX[DB]

Date 13/03/2012

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

To :
C.C.E.NOIDA
OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL
EXCISE AND SERVICE TAX, C-56/42, SECTOR-62,
NOIDA - 201307
C.C.E.NOIDA

Appellant
Vs
Respondent

M/S JINDAL POLYSTER 19TH,KM.

2012 EX[DB] dated 07-3-12

I am directed to transmit herewith a certified copy of **Final order No.260/**
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S JINDAL POLYSTER 19TH,KM.
HAPUR BULANDSHAHR ROAD
GULAOTHI

2. Adv. / Consult

MR.L.P. ASTHANA & MS REENA KHAIR

R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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
Excise Appeal No.746/2005

(Arising out of OIA No.360/CE/APP/Noida/04 dt.10.11.04 passed by
the CCE(A), Noida)

Date of Hearing/Decision: 27.02.2012

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?	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?	See
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Noida

Vs

Appellant

M/s.Jindal Polyester

Respondent

Present for the Appellant: Shri Sunil Kumar, AR

Present for the Respondent: Shri L.P.Asthana, Advocate

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

FINAL ORDER NO. A/260/2012-EX (AR)

PER: ARCHANA WADHWA

Being aggrieved with the order passed by the
Commissioner (Appeals), the Revenue has filed the present appeal.
We have heard Shri Sunil Kumar, AR appearing for the Revenue and
Shri L.P.Asthana, learned Advocate appearing for the respondents.

2. The respondent filed application for remission of duty under Rule 49 of Central Excise Rules. The said application was rejected by the Commissioner of Central Excise, Noida vide Order-in-Original No.1/2002-03 dt.18.4.2002. The respondent filed appeal before Hon'ble CESTAT, which was allowed vide Final Order No.A/1098/02-NB(D) dated 23.10.02 reported in 2003 (152) ELT 228 (Tri.-Del.).

3. Against the said decision of Hon'ble CESTAT, Department filed Central Excise Reference Application No.28/2003 before Hon'ble Allahabad High Court. The said application was dismissed by Hon'ble High Court vide Order dated 30.08.2010.

4. In the parallel proceedings, Deputy Commissioner of Central Excise, Noida had confirmed demand of Rs.27,14,008/- on the polyester filament waste destroyed in fire. The respondent filed appeal before Commissioner (Appeals), Noida. Commissioner (Appeals) directed the respondent to deposit Rs.10 lakhs under section 35F vide Order dated 12.08.02, which was deposited by them. The appeal filed by assessee was rejected by Commissioner (Appeals), Noida vide Order-in-Appeal No.613/C.E./Appl/Noida/03 dated 26.12.03. Against this order, respondent filed appeal before Hon'ble CESTAT, which was allowed by Hon'ble CESTAT vide Final Order No.342/04-NBC dated 07.05.04. Against this order of the Hon'ble CESTAT, Department has filed Central Excise Appeal No.138 of 2004 before Hon'ble Allahabad High Court. The said appeal was rejected by the Hon'ble High Court vide Order dated 05.08.2010.

5. The present appeal stands filed by the Revenue, on the ground that the Tribunal's earlier order dated 23.10.02 does not stand accepted by the department and reference application stands filed before Hon'ble Allahabad High Court. However, we note that the appeal filed before Hon'ble Allahabad High Court ^{already} ~~also~~ stands rejected by Hon'ble High Court vide its order dated 05/08/2010. As such, sole ground pressed into service by the Revenue is no longer available to them. As nothing survives in the present appeal of the Revenue, the same is accordingly rejected.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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