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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/2330/2011 - EX[DB]
E/S/3059/2011-EX

Date **13/03/2012**

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

To :
M/S JHV DISTILLERIES & SUGAR MILLS LTD
KHUSHINAGAR(UP)

M/S JHV DISTILLERIES & SUGAR MILLS LTD Appellant

Vs

C.C.E ALLAHABAD **STAY ORDER NO. 414/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/271/ 2012 EX[DB]** dated 06-3-12 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2330 of 2011
Excise Stay Application No. 3059 of 2011

[Arising out of Order-in-Appeal No. 85-CE/ALLD/2011 dated 28.6.2011passed by the Commissioner of Central Excise(Appeals), Allahabad]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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

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M/s. JHV Distilleries & Sugar Mills Ltd. — Appellants

Vs.

Commissioner of Central Excise Allahabad — Respondent

Appearance:

Shri Rajesh Chibber, Advocate for the Appellants
Shri S.K. Panda, Jt.CDR for the Respondent

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

Date of Hearing/decision : 1.03.2012

STAY **ORAL ORDER NO.** 414/2012-EX (BR)
FINAL ORAL ORDER No. A/271/2012-EX (BR)

Per Archana Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of duty and penalty, we proceed to decide the appeal with the consent of both sides as we find that the matter needs to go back to the original adjudicating authority for verification of the records and subsequent re-adjudication.

2. The dispute ~~reveals~~ revolves around clearance of capital goods as waste and scrap by the appellants during the period 06.12.2005 to 13.3.2008, the said waste and scrap of capital goods was cleared by the appellants without payment of any duty. The Revenue's contention is that the said capital goods were modvatable capital goods and as such, in terms of the provisions of Cenvat credit Rules, the appellant is required to pay duty on the said capital goods. On the other hand, it is the appellants contention that the said unit was purchased by them in the year 2005 and ~~way~~ was lying ~~ideal~~ idle prior to that from 1997 onwards. The capital goods which they have cleared were not modvatable capital goods and no modvat credit stands availed on the same. It is also contended that no modvat credit was availed by them on the said capital goods. However, learned advocate fairly agrees that if modvat credit was availed on the said machines, they are liable to pay duty on the clearance of scrap of the same in the subsequent years from December, 2005 to March, 2008.

3. We find that the dispute revolves around factual position. Modvat credit on the capital goods was introduced in the year 1994 and

admittedly, if the capital goods were purchased by the earlier manufacturer prior to 1994 but if no modvat credit has been availed on the same, the appellants liability to pay duty at the time of clearance is not there.

4. Though the appellants produced on record, various evidence to that effect, according to them, the same has not been carefully examined and verified by the authorities below who have simplicitor made an observation that the appellant failed to provide evidence to show no modvat credit was availed on the said capital goods. Learned advocate submits that balance sheets for the relevant years would show purchase of capital goods i.e. whether prior to 1994 or after 1994. Similarly, the other documentary evidence would establish the fact of availment of credit on the said capital goods or otherwise. He fairly agrees that only if the appellant is able to establish, by production of evidence that there is no positive act of suppression of mis-statement on their part and that such credit was not availed by them, duty on the capital goods is to be dropped. In case, the appellants is not able to establish that either the capital goods were purchased before 1994 or no modvat credit stand availed by the earlier manufacturer, they would not contest the demand on the said ground.

5. In view of the above submissions made by the learned advocate, we deem it fit to remand the matter to the adjudicating authority for giving opportunity to the appellants to establish the fact or otherwise of availment of modvat credit in respect of the said disputed credit on the

capital goods. The adjudicating authority would examine the same properly and would redecide the matter in the light of the evidences materials ~~produced~~. that may be produced in de-novo proceedings.

6. Stay petitions as also appeal gets disposed of in the above terms.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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