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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/2855/2009-2856/2009 - EX[DB] Date **27/04/2012**
E/S/2940-2941/2009-EX

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

To :
M/S AZAD COACH PVT. LTD.

F-18, RIICO IND.AREA, KUKAS, JAIPUR.

M/S AZAD COACH PVT. LTD. Appellant

Vs

C.E.E. JAIPUR I **STAY ORDER NO. 709-710/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.472-473 2012 EX[DB]** dated 19-4-12 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.ALOK KOTHARI
A-92, MANISH MARG, NEMI NAGAR, GANDHI PATH, VAISHALI NAGAR, JAIPUR

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
14. SHRI A.S. CHADDA, DIRECTOR OF M/S AZAD COACH PVT. LTD. F-18, RIICO IND.AREA, KUKAS, JAIPUR.

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: 19.4.2012

Stay Application No.2940 to 2941 of 2009 and Central Excise Appeal No.2855 - 2856 of 2009

Arising out of the order in appeal No. 164-165(DK)CE/JPR-I/2009 dated 27.7.2009 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur I.

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?	

Azad Coach Pvt. Ltd. .. Appellants
Shri A.S. Chadda, Director

Vs.

C.C.E., Jaipur I .. Respondent

Present Shri Alok Kothari, Advocate for the appellants

Present Shri N. Pathak, A.R. for Revenue

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

STAY order No 709-710/2012-Ex(BR)
FINAL Order No. A/472-473/2012-Ex(BR)

Per Shri Rakesh Kumar (Oral):

The appellant company are engaged in building of bus bodies. They received chassis from Tata Motors Ltd. and cleared complete buses after building complete body on the chassis. During the period of dispute i.e. 1.4.07 to 31.12.2007, they paid duty on the buses on the of cost of chassis plus the body building chargers. The Department was of the view that since they were building bus bodies on job work basis on behalf of Tata Motors Ltd., they were required to pay duty on the basis of the value determined in terms of the provisions of Rule 10A of the Central Excise Valuation Rules, 2000 on the price at which the buses were sold by Tata Motors Ltd. from their Depots. It is on this basis, that the jurisdictional Joint Commissioner of Central Excise vide order in original dated 12.9.2008 confirmed the duty demand of Rs.29,32,297/- along with interest and also imposed penalty of equal amount on the appellant company under Section 11AC of the Act and penalty of Rs.5 lakhs on Shri A.S. Chadda, Director of the appellant company under Rule 26 of the Central Excise Rules, 2002. On appeals along with stay applications being filed before Commissioner (Appeals), the appellants vide stay order No.2-3(DK)/CE/JPR-I/2009 dated 8.6.2009 were directed to deposit the duty amount for compliance with the provisions of Section 35F of the Act. But on failure of the appellants to deposit the duty amount within the stipulated period, the Commissioner (Appeals) vide order in appeal No. 164-165(DK)CE/JPR-I/2009 dated 27.7.2009 dismissed the appeals for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944. Against this order of the Commissioner (Appeals), the appellants have filed these appeals along with stay applications.

2. Heard both sides.

3. Shri Alok Kothari, Advocate, the learned Counsel for the appellants, assails the impugned order on the ground that while dismissing the appeals on technical ground of failure to comply with the provisions of Section 35F of the Central Excise Act, 1944, the Commissioner (Appeals) failed to consider the plea of the appellants regarding financial hardship which prevented them from complying with

the direction to deposit the excise duty. He further submits that the total demand of excise duty of Rs.29,32,297/- has since been paid in installments and, therefore, the impugned order be set aside and the appeals be allowed to be heard on merits. Shri Alok Kothari, fairly concedes that on merits, this matter is covered against the appellants by the judgement of the Tribunal in the case of **Audi Automobiles vs.C.C.E., Indore reported in 2010 (249) ELT 124 (Tri-Del.),** as far as the duty demand of differential excise duty is concerned. He, however, pleads that there is no justification for imposition of penalty on the Appellant company under Section 11AC and penalty on the Director under Rule 26 of the Central Excise Rules, as the issue relates to interpretation of the provisions of law and the Appellants had discharged duty liability under impression that the duty on the buses was required to be paid on the value of chassis plus the job charges. He therefore, pleads that there is no justification for imposition of penalties.

4. Shri N. Pathak, learned Senior Departmental Representative pleads that the issue involved in this case is squarely covered by the decision of the Tribunal in the case of **Audi Automobiles** (supra); that during the period of dispute, since the appellants had not discharged the duty liability correctly, penalty has been correctly imposed on them under Section 11AC and Rule 26 of the Central Excise Rules, that though the differential duty demand has been paid, but the interest on the differential duty demand has not been paid. Shri Kothari,Advocate, the learned Counsel for Appellants, however, submits that the Appellants undertake to to pay the interest on the differential duty demand confirmed within eight weeks.

5. We have carefully considered the submissions from both sides and perused the record. The Commissioner (Appeals) had dismissed the appeals for non-compliance of the provisions of Section 35F of the Act

without going into the merits of the case. Though normally in such a case we would have remanded the matter to Commissioner of Central Excise (Appeals) for decision on merits, since the issue involved in this case stands decided against the appellants in the case of **Audi Automobiles** (supra)and since the appellants have paid differential duty and also undertake to pay interest, we proceed to decide the appeals on merit. Accordingly, in the view of the Tribunal's judgment in the case of **Audi Automobiles** (supra) the duty demand along with interest is upheld . So far as the penalty on the appellant company is concerned, since we find that the learned Counsel for the appellants is justified in contending that the matter relates to interpretation of valuation Rules, it cannot be said that there was intention ~~contention~~ on the part of the appellant to evade duty. Accordingly, we do not find any justification for imposition of penalty. Accordingly , while maintaining the duty demand and interest thereon, we set aside the penalty on the Appellant company and its Director Shri A.S. Chadda.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/