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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/2734/2011-2735/2011 - EX[DB] Date **02/05/2012**
E/S/3544-3545/2011-EX

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

To :
M/S VEE KAY CONCAST PVT LTD
VILLAGE KANGANWAL, LUDHIANA.

M/S VEE KAY CONCAST PVT LTD Appellant

Vs

C.E. CHANDIGARH **STAY ORDER NO. 724-725/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/484-485 **2012 EX|DB|** dated 02-4-12 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY, NEW DELHI-110024

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. SH ATUL GUPTA
DIRECTOR OF VEE KAY CONCAST P L TD, VILLAGE- KANGANWAL, LUDHIANA.

Assistant Registrar
(Excise Appeal Branch)

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

COURT NO. I

DATE OF HEARING/DECISION : 02/04/2012.

Excise Stay Application No. 3544-3545 of 2011 in Appeal No. 2734-2735 of 2011

[Arising out of the Order-in-Appeal No. 67-68/Appl/CE/2011 dated 24/06/2011 passed by The Commissioner (Appeals), Central Excise, Chandigarh – I.]

For Approval and signature :
Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, 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?	:
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	:

M/s Vee Kay Concast Pvt. Ltd.] Appellants
Shri Atul Gupta]

Versus

CCE, Chandigarh – I Respondent

Appearance

Shri Hrishikesh, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 724-725/2012-Ex(BR)
FINAL Order No. A/484/2012-485 Dated : ________

Per. Rakesh Kumar :-

The appellant are manufacturers of rolled products out of MS Ingots. The allegation against the appellant is that during the period from 1/9/04 to 2/11/04 they received non-duty paid MS Ingots manufactured by M/s Malerkotla Steels & Alloys (P) Ltd. (hereinafter referred to as MSAPL) cleared by them clandestinely and used the same in the manufacture of rolled products. On this basis, the Additional Commissioner vide order-in-original dated 14/9/2010, besides confirming the duty demand of Rs. 27,74,309/- against M/s MSAPL and imposition of penalty of equal amount on them, also imposed penalty of Rs. 5,00,000/- on the appellant company and another penalty of Rs. 5,00,000/- on Shri Atul Gupta, Director of the appellant company under Rule 26 of the Central Excise Rules, 2002. Both the appellants filed appeals before the Commissioner (Appeals) against the Additional Commissioner's order who vide stay order No. 5-7/CE/Stay/CHD-I/11 dated 31/3/11 directed both the appellants to deposit of Rs. 1,00,000/- each towards penalty for compliance with the provisions of Section 35F of the Central Excise Act, 1944. Both the appellants instead of complying with the directions of the stay order passed by the Commissioner (Appeals), filed modification applications vide letter dated 18/4/04. The Commissioner (Appeals), however, vide final order-in-appeal No. 67-68/Appl/CE/2011 dated 24/06/2011 dismissed the appeals for non-compliance of the provisions of Section 35F, without going into the merits of the case. Against these orders of the Commissioner (Appeals) these two appeals alongwith stay applications have been filed.

2. Heard both the sides. Though these matters were today listed for hearing of stay applications only, after hearing both the sides for sometime, we are of the view that these matters can be taken up for final disposal. Accordingly, with the consent of both the sides, these matters were heard for final disposal after waiving the requirement of pre-deposit.

3. Shri Hrishikesh, Advocate, the learned Counsel for the appellant, pleaded that the Commissioner (Appeals) without considering their application for modification has dismissed the appeals for non-compliance of the provisions of Section 35F, which is not correct, and that the Commissioner (Appeals) before dismissing their appeals for non-compliance must have, first, considered their applications for modification of the stay order. He, therefore, pleaded that the impugned order is not correct.

4. Shri Sanjay Jain, the learned Senior Departmental Representative, while pleading that the appellant have not complied with the provisions of Section 35F and their appeals have been correctly dismissed, accepted that the appellants had filed applications before the Commissioner (Appeals) for modification of the stay order which were not considered by the Commissioner (Appeals).

5. We have carefully considered the submissions from both the sides and perused the records.

6. It is clear from the impugned order of the Commissioner (Appeals) that both the appellants had filed applications for modification of the stay order dated 31/3/11, but the same were not considered observing that at this stage, the request for modification of the stay order is not required to be considered and accordingly, the Commissioner (Appeals) dismissed the appeals for non-compliance of the provisions of Section 35F. Once the appellant had made applications for modification of the stay order, the Commissioner (Appeals), before proceeding to decide the appeals finally, should have dealt with the modification applications. Dismissing the appeals for non-compliance of the provisions of Section 35F without deciding the applications for modification of the orders of pre-deposit is not correct. The impugned order, therefore, is set aside and the matter is remanded to the Commissioner (Appeals) for denovo decision after considering the appellant's applications for modification of the stay order dated 31/3/2011.

(Pronounced in open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK