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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/3347/2010-3348/2010 - EX[DB] Date **03/05/2012**
E/S/3131-3132/2010-EX

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

To :
M/S PESRYS SDN.BHD.,
1/4, GROUND FLOOR, SUNDER VIHAR, OUTER RING ROAD, PASCHIM VIHAR, NEW DELHI-110087

M/S PESRYS SDN.BHD., Appellant

Vs

C.C.E. DELHI I **STAY ORDER NO. 728-729/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/492-493 2012 EX|DB|** dated 27-4-12 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. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult SH. SUNIL KUMAR, ADV., UO
MR.C.HARISHANKAR
46, BANK ENCLAVE,DELHI-110092

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. ZULKIFLI BIN KAMARUDDIN, M/S PESRYS SDN.BHD., 1/4, GROUND FLOOR, SUNDER VIHAR, OUTER RING ROAD, PASCHIM VIHAR, NEW DELHI-110087

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 27.04.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 should 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 Departmental authorities?	

Excise Appeal Nos. 3347 – 3348 of 2010 with
Excise Stay No. 3131 - 3132 of 2010
[Arising out of the Order-in-Original No. 07/D-I/2010 dated 13.04.2010 passed by the Commissioner of Central Excise, New Delhi]

M/s Pesrys SDN BHD
Zulkifli Bin Kamaruddin
Appellants

Versus

CCE, Delhi-I
Respondent

Appearance
Present Sh. Sunil Kumar, Advocate for the Appellant.
Present Sh. I. Baig, AR for the Respondent.

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

STAY ORDER NO.. 728-729/2012 – Ex (BR)
FINAL Order No. A/ 492-493/2012 – Ex(BR)

Per. Rakesh Kumar:

The issue involved in this case is about the excisability of pre cast segments and parafrets fabricated by the appellant for the Delhi Metro Rail Corporation Limited.

2. Heard both the sides. Though these matters were listed for hearing of stay application only, after hearing the same for some time, we were of the view that the same can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and the matters are heard for final disposal with the consent of both the sides.

3. Both the sides agree that in view of exemption Notification No. 1/2011-CE (NT) dated 17.02.2011 issued by the Board which read as under:-

> "Whereas the Central Government is satisfied that a practice was generally prevalent regarding levy of duty of excise (including non-levy thereof) under Section 3 of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as the said Act), on goods of the description given in the Table below, and that such goods were liable to duty of excise which was not being levied under section 3 of the said Act according to the said practice, during the period as specified in the said Table, namely:-

Description	Tariff sub-heading	Period
(1)	(2)	(3)
Goods manufactured at the site of construction for use in construction work at such site.	Sub-headings of Chapter 68 of the First Schedule to the Central Tariff Act, 1985 (5 of 1986) except sub-headings 6804, 6805, 6811, 6812 and 6813.	1st March, 2006 to 6th July, 2009 (both inclusive)

2. Now, therefore, in exercise of the powers conferred by section 11C of the said Act, the Central Government hereby directs that the whole of duty of excise leviable under the said Act on such goods falling under such tariff sub-headings as specified in the said Table but for the said practice, shall not be required to be paid for the period specified in column (3) of the said Table, subject to fulfillment of condition that the benefit under this notification shall not be admissible unless the unit claiming benefit in terms of this notification reverse the input credit, if any, taken in respect of inputs used in manufacture of such goods on which the said duty of excise was not levied during the aforesaid period in accordance with the said practice";

the Tribunal vide final order No. 269-286/2011-EX(DB) dated 04.03.2011 had allowed the appeals of the other appellant and in this case, also the issue involved is identical and the period of dispute from 21.3.2008 to 6.12.2008 is within the validity period of exemption notification..

4. In view of concession given at bar and the issue involved being identical, these appeals alongwith stay applications are also allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant