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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/559 /2006 - EX[DB] Date **03/05/2012**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S PASHUPATI SPINING & WEAVING MILLS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/500 2012 EX[DB]** dated 30-4-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S PASHUPATI SPINING & WEAVING MILLS LTD.
VILLAGAE-KHERI KALA AMB
DISTT SIRMON H.P.

2. Adv. / Consult
MR.BIPIN GARG,ADV.,
B-1/1289,A-VASANT KUNJ, NEW DELHI

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)

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

<u>COURT-I</u>

Date of hearing/ decision: 30.04.2012

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 No. 559 of 2006

(Arising out of order in appeal No. 403/CE/CHD/2005 dated 10.11.2005 of the Commissioner of Central Excise (Appeals), Chandigarh).

CCE, Chandigarh — Appellants

Vs.

M/s Pasupati Spinning & Wvg. Mills Ltd. — Respondent

Present Sh. Bipin Garg, Advocate for the appellant.
Present Sh. S.R. Meena, AR for the respondent

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

FINAL Order No. A/500/2012-Ex(BR)

Per. Justice Ajit Bharihoke:

The department has preferred this appeal against the order of Commissioner (Appeals) No.01/CE/JC(Adj)/Adj/05 dated 22.8.2005 whereby he accepted the appeal. The order-in-original confirming duty demand of Rs. 9,53,414.81 with interest by denying the benefit of concessional rate of duty claimed under Notification No. 25/97-CE dated 7.05.1997 as superseded by Notification No. 5/98-CE dated 02.06.1998 on the ground that the demand raised by show cause notice was time barred by limitation.

2. At the outset, we may note that Commissioner (Appeals) has set aside the order-in-original on technical ground of limitation without adverting to the merits of the case.

3. Sh. S.R. Meena, AR of the appellant has submitted that the impugned order passed by Commissioner (Appeals) is not sustainable in law for the reason that Commissioner (Appeals) has proceeded on the premise that show cause notice raising the demand was served on the appellant on 14.07.2005 i.e. after a lapse of more than five years from the period of demand from May 1998 to September, 1998. Sh. S.R. Meena, AR submitted that the Commissioner (Appeals) has failed to appreciate that the show cause notice dated 3.12.1998 and it was actually dispatched for service on the respondent on the same day and served in the year 1998. Thus, it is contended by ld. AR for the appellant that the show cause notice was served upon the respondent within a period of one year from the period of demand. As such, it cannot be said that the show cause notice was time barred. Accordingly,

representative of the department has strongly urged for setting aside the order-in-appeal and confirming the order-in-original.

4. Shri Bipin Garg, ld. Advocate for the respondent submitted that Section 11A of the Central Excise Act, 1944 provides limitation of period of one year for service of show cause notice on the assessee and this proviso in cases of fraud, collusion or willful misstatement or suppression of facts extends that limitation upto five years. He submitted that in the instant case Commissioner (Appeals) rightly held the claim of the department is time bar for the reason that show cause notice pertaining to the demand relating to May 1998 to September, 1998 was served on the respondent in the year 2005 i.e. after expiry of more than five years from the period of order.

5. We have considered the rival contentions and perused the record. Only issue raising for determination in respect of the date on which the show cause notice was served. To seek clarification on this aspect, the Tribunal vide order dated 27.4.2010 had directed the department to file affidavit regarding the issue of show cause notice by him, non availability of receipt of delivery and delay in adjudication by seven years. Pursuant to the direction of the Tribunal, the appellant has filed reply under signature of Manjeet Singh Assistant Commissioner, Central Excise Division, Shimla alongwith his affidavit affirming that the contents of the reply are correct and true to his knowledge. The perusal of said reply would show that it is vague. Regarding delivery of show cause notice it states that as per information given by sector officer Sh. R.P. Sharma vide letter dated

16.4.2010, show cause notice was delivered by hand to Sh. V.P. Bump, the then Assistant Manager (Excise). This however, is not sufficient to establish that the show cause notice was served on the assessee. The reply further states, as intimated by the jurisdiction Supdt. neither the acknowledgement nor the receipt of show cause notice received by the assessee in token of delivery, nor the office copy of the show cause notice could be traced in the range office. The reply also states that the issue of non receipt of show cause notice was not raised by the assessee despite corrigendum dated 18.07.2005. From the above service of show cause notice on the assessee in the year 1998 can not be inferred. Perusal of the order-in-original would show that as per this order written submissions against the show cause notice was submitted by the Counsel for the assessee/respondent on 22.07.2005. There is nothing in the order-in-original or the record to show as to what proceedings took place pursuant to the show cause notice before the filing of written submissions by the assessee/respondent on 22.07.2005. Had the plea of the appellant, that show cause notice was served on the respondent in the year 1998, been correct there ought to have been some proceedings conducted during the period upto 22.07.2005. The order-in-original do not give any clue in this regard. Therefore, in absence of any evidence regarding service of show cause notice on the respondent prior to 22.07.2005, the impugned order of Commissioner (Appeals) holding the show cause notice to be time barred cannot be faulted. As per section 11A the period of limitation for service of show cause notice is one year which in exceptional cases of fraud, collusion, concealment or suppression of facts is extended upto five years. In the instant case if the date of show cause notice is taken as 14.07.2005, the show cause notice having been served after about more than six years is time barred.

6. The result of above discussions that the appellant had failed to show any cogent reason for interfering with the order of Commissioner (Appeals). Appeal is accordingly dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant