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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/2270/2011-2278/2011 - EX[DB]
E/S/2967-2975/2011-EX

Date **14/05/2012**

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

To :
M/S GOLDEN TOBACCO LTD.
FORMERLY KNOWN AS GTC INDUSTRIES LTD. 1303
& 1304, VIJAY BUILDING, 17, BARAKHAMBA ROAD,
NEW DELHI.
110001

M/S GOLDEN TOBACCO LTD. Appellant

Vs

C.C.E. (ADJN.) NEW DELHI **STAY ORDER NO. 782-790/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.552-560 2012 EX|DB|** dated 08-5-12 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. (ADJN.) NEW DELHI
ROOM NO. 139-A, C.R. BUILDING,
I.P. ESTATE, NEW DELHI.

2. Adv. / Consult SH. L. P. ASTHANA, ADV,
R-163, IIND FLOOR,
GREATER KAILASH-I,
N. DELHI-118
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)

P.T.O.-2,

14. SH. J.P.KHETAN, MANAGING DIRECTOR OF .
M/S GOLDEN TOBACCO LTD., FORMERLY KNOWN AS GTC INDUSTRIES LTD.
1303 & 1304, VIJAY BUILDING, 17, BARAKHAMBA ROAD,
NEW DELHI.

15. SRI. ANAND KUMAR DALMIA, PROPRIETOR .
M/S KAMADGIRI AGENCIES, R/O Q/4/3 PADAM APTS 16/16, CIVIL LINES,
KANPUR.

16. M/S BHAVNESH CHADHA PROPRIETOR .
M/S NIRMAL ENTERPRISES, R/O G-27, JANGPURA EXTENSION, NEW DELHI.

17. M/S CHINAR CIGARETTES PVT. LTD. .
42, BRIJ INDUSTRIAL AREA, BHARATPUR, RAJASTHAN.

18. MR. RAJESH KUMAR AGARWAL, PROPRIETOR .
M/S DELHI MARKETING COMPANY & M/S GORAKHPUR MARKETING CO.
NO. 406, PRABHAT KIRAN (4TH FLOOR), 17-RAJENDRA PLACE, PUSA ROAD,
NEW DELHI.

19. SH. ANURAG DALMIA, VICE CHAIRMAN OF .
M/S GOLDEN TOBACCO LTD., FORMERLY KNOWN AS GTC INDUSTRIES LTD.
1303 & 1304, VIJAY BUILDING, 17, BARAKHAMBA ROAD,
NEW DELHI.

20. SH. SANJAY DALMIA, CHAIRMAN OF .
M/S GOLDEN TOBACCO LTD., FORMERLY KNOWN AS GTC INDUSTRIES LTD.
1303 & 1304, VIJAY BUILDING, 17, BARAKHAMBA ROAD,
NEW DELHI.

21. SRI. P.K. VERMA, PROPRIETOR .
M/S TRISHUL ENTERPRISES, R/O 86, JORBAGH,
NEW DELHI.

22. MS. SUJATA SHIROLKAR, ADV.,
H. NO. 711/4, POKET-4, MAYUR VIHAR-I
N. DELHI-91

23. SH. S.K. MAGGU, ADV., FOR APPELLANT

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

COURT-I

Date of hearing/ decision: 08.05.2012

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. 2270 to 2278 of 2011 with Excise Stay Nos. 2967 to 2975 of 2011

(Arising out of order-in-original No. CCE/ADJ/TVS/10/2001 dated 20.06.2011 passed by the Commissioner of Central Excise, New Delhi).

M/s Golden Tobacco Ltd. — Appellants
Sanjay Dalmia, Chairman
Anurag Dalmia, Vice Chairman
J.P. Khetan, M.D.
M/s Chinar Cigarettes Pvt. Ltd.
Bhavnesh Chadha
Ananad Kumar Dalmia
P.K. Verma
Rajesh Kumar Agarwal

Vs.

CCE, (Adj.) New Delhi — Respondent

Appearance:
Sh. L.P. Asthana & Ms. Sujata Shirolkar, Advocates & Sh. S.K. Mogia, for the appellant.
Sh. Sunil Kumar, AR for the respondent

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

STAY order No. 782-790/2012-Ex(BR)
FINAL Order No. 552-560/2012-Ex (BR)

Per. Justice Ajit Bharihoke:

These appeals are preferred against the order-in-original confirming duty demand of Rs. 30,85,63,593/- with interest against the appellant M/s Golden Tobacco Ltd. and M/s Chinar Cigarettes Pvt. Ltd. besides imposing penalty on various persons including the appellant.

2. These matters were originally listed for argument on stay applications moved by the appellants seeking waiver of the condition of pre-deposit of the duty demand and penalty. During the course of arguments Sh. L.P. Asthana, Advocate for the appellant submitted that the order has been passed in contravention of the stay order dated 01.11.2001 passed by the High Court of Rajasthan, as such is not sustainable in law.

3. Since the arguments advanced by the ld. Counsel for the appellant is purely legal with the consent of the parties we have proceeded to hear the appeals itself after waiving the condition of pre-deposit of demand, interest and penalty.

4. Sh. L.P. Asthana, ld. Counsel for the appellant submitted that during adjudication proceedings the appellant requested for supply of copies of all the relied upon documents in terms of the law laid down by the Supreme

Court. Commissioner (Adjudication) however failed to supply the complete set of relied upon documents. Accordingly, a writ petition seeking direction to the Department to supply copies of relied upon documents to the appellant was filed. In the aforesaid writ petition, High Court of Rajasthan vide order dated 01.11.2001 stayed the adjudication proceedings. It is submitted that despite the stay order the Commissioner (Adjudication) instead of supplying the documents demanded by the appellant proceeded to pass adjudication order and signed the same on 7th November without mentioning the year. Ld. Counsel submits that this order being in contravention of the stay order passed by the High Court cannot be sustained and is liable to be set aside. It has further submitted by Ld. Sh. L.P. Asthana, Advocate that the High Court of Rajasthan ultimately allowed the writ petition vide order dated 30.01.2006 directing the department to supply copies of all the relied upon documents. It is submitted that from the above it is apparent that the Commissioner (Adjudication) has violated the stay order passed by the impugned order without supplying copies of relied upon documents to the appellant and this itself amounts to violation of principle of natural justice because non supply of documents have prevented the appellant to properly defend the show cause notice. Thus, ld. Counsel has urged that the appeal be accepted and matter be remanded back for denovo adjudication after complying with the direction of the High Court and also permitting the appellant to cross-examine the relevant witnesses whose statement the department wants to rely upon.

5. Sh. Sunil Kumar, ld. AR on the contrary has argued in support of the impugned order and he has referred to the affidavit of Sh. Pawan Kumar Jain, Commissioner (Adjudication), Delhi and submitted that adjudication order was passed by the then Commissioner (Adjudication) on 30.10.2001 when he approved the fair copy of the order in the administrative file. It is submitted that the order came into operation on 30.10.2001 and signing of the order by the Commissioner (Adjudication) on 7.11.2001 was only a formality. Thus, Sh. Sunil Kumar, ld. AR submitted that the impugned order was passed much before the said order. It is also contended that the final order of the High Court dt. 30.01.2006 has not given direction to the department to supply the copies of relied upon documents and it has no bearing on the validity of the impugned order because it was passed much before the final order. More so, because of the fact that the High Court while deciding the writ petition did not set aside the impugned order. Sh. Sunil Kumar, ld. AR has thus, pressed for the dismissal of all the appeals.

6. We have considered the rival submissions and perused the record. On perusal of the copy of the order of High Court dated 01.11.2001 it transpires that on the said date of hearing Sh. Bharat Vyas, Advocate accepted notice on behalf of the department in the writ petition and made a statement at bar that the proceedings were pending before the Commissioner, Central Excise, Delhi and the aforesaid adjudication proceedings shall not be proceeded till the next date i.e. 07.11.2001. From the above, it is clear that stand of the department before the High Court was that the adjudication proceedings pending on 01.11.2001. Admittedly despite the undertaking given to the

High Court, the Commissioner (Adjudication) has proceeded to sign the adjudication order in original on 07.11.2001. This amounts to violation of the undertaking given before the High Court. The plea of the respondent is that actually the adjudication order came into existence on 30.10.2001 when the Commissioner (Adjudication) approved the draft of the order-in-original in the administrative file and the date of order therefore is 30.10.2001 and not 07.11.2001 when the order was signed by the concerned Commissioner. We are unable to accept this contention because in order to be executable order, it necessarily has to be signed by the authority concerned. Admittedly impugned order was signed on 7.11.2001 during the operation of stay order. Therefore, it came into existence on 07.11.2001 in violation of the stay orders, which was within the knowledge of the Commissioner (Adjudication), therefore, we do not find any merit in the contention of the ld. AR for the department.

7. In view of the above, it is evident that the impugned order has been passed by the Commissioner (Adjudication) in violation of the undertaking given to the Rajasthan High Court on 07.11.2001 by Shri Bharat Vyas, Advocate for the department. Since the order has been passed in violation of the undertaking, we find it difficult to sustain the same otherwise also in view of the final order of the High Court on the writ petition of the appellant directing the department to supply copies of the relied upon documents, it is apparent that the appellant was not supplied with relevant relied upon documents by the adjudicating authority. This obviously has resulted in failure of justice because non supply of documents has prevented the

appellant from defending the show cause notice properly. On this count also, the order in appeal cannot be sustained. Thus, we accept the appeals and remand the matters back to the Commissioner (Adjudication) for denovo adjudication and decide afresh with the direction that the Commissioner (Adjudication) shall supply the copies of documents to the appellant in terms of the direction of the Rajasthan High Court given in the writ petition vide order dated 30.01.2006. The Commissioner (Adjudication) shall also afford an opportunity of hearing to the appellant to cross-examine the relevant witnesses subject to their availability. The appeals are disposed of in the above terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant