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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/2205/2011-2206/2011,2212/2011,2313/2011-2320/2011 - EX[DB] Date **23/05/2012**
E/S/2893-2894,2901,3039-3046/2011-EX(DB)

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

To :
M/S NARBADA INDUSTRIES

LANE NO. 2, PHASE-II, PHASE-II, SIDCO,
INDUSTRIAL COMPLEX, BARI BRAHMANA, JAMMU,
J&K

M/S NARBADA INDUSTRIES Appellant

Vs

C.C.E. MEERUT II **STAY ORDER 824-834/2012-EX (DB)** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/**587-597/ 2012 EX[DB]** dated 14/5/2012 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.GAGAN KOHLI
394,SECTOR-30 A, CHANDIGARH.

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 Regis
(Excise Appeal B

P.T.O

14\. ATUL KUMAR, DIRECTOR
M/S SHREE BALAJI AROMATICS PVT. LTD.SITA ASHRAM, CHANDAUSI,
DISTT. MORADABAD.

15\. M/S AKASH TRADERS
SH. PRADEEP PRAKASH AGARWAL, PROP. LANE NO. 4, SIDCO INDUSTRIAL
COMPLEX, BARI BRAHMANA, JAMMU.

16\. M/S ELDORADO HOLDINGS PVT. LTD.
9, EZRA STREET, KOKATA.

17\. SH. DINESH KUMAR AGARWAL, DIRECTOR
M/S SHREE BALAJI AROMATICS PVT. LTD., SITA ASHRAM, CHANDAUSI,
DISTT. MORADABAD.

18\. SHRI SANJIV GOYAL, MANAGING DIRECTOR,
M/S NARBADA INDUSTRIES, LANE NO. 2, PHASE-II, PHASE-II, SIDCO,
INDUSTRIAL COMPLEX, BARI BRAHMANA, JAMMU, J&K

19\. VIVEK KUMAR AGARWAL, DIRECTOR
M/S SHREE BALAJI AROMATICS PVT. LTD.

20 M/S S.B. AROMATICS
MOHALLA MAHAJAN, CHANDAUSI, DISTT. MORADABAD.

21\. ROHIT KUMAR AGARWAL, PARTNER
M/SS.B. AROMATICS, MOHALLA MAHAJAN, CHANDAUSI, DISTT.
MORADABAD.

22\. ATUL KUMAR, PARTNER
M/S S.B. AROMATICS, MOHALLA MAHAJAN, CHANDAUSI, DISTT.
MORADABAD.

23\. SHREE BALAJEE AROMATICS (P) LTD.
SITA ASHRAM, CHANDAUSI, DISTT. MORADABAD.

24 SH. K.K.ANAND ADV.
A-5,BASMENT LAJPAT NAGAR-III
NEW DELHI-24

25 SH.S.K.MATHUR & R.L.THAPALIAYAL ADV.
C-15, 16, HARTHALA INDUSTRIAL AREA KANTH ROAD
MORADABAD (U.P.)

26. SH. SANJEEV KUMAR NARULA ADV.
1134, SECTOR-29, FARIDABAD (H.R)

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

COURT-I

Date of hearing/ decision:14.05.2012

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. 2205, 2206, 2212, 2313 to 2320 of 2011 with Excise Stay Nos. 2893, 2894, 2901, 3039, 3040 to 3046 of 2011

(Arising out of order-in-original No. 01/Commr/M-II/2011-12 dated 14.06.2011 passed by the Commissioner of Central Excise, Meerut).

M/s Narbada Industries — Appellants
Sanjiv Goel, Managing Director
M/s Eldorado Holding Pvt. Ltd.
M/s Shree Balaji Aromatics Pvt. Ltd.
Rohit Kumar Agarwal, Partner
Atul Kumar, Director
M/s S.B. Aromatics
Akash Traders
Vivek Kumar Agarwal, Director
Dinesh Kumar Agarwal, Director
Atul Kumar, Partner

Vs.

CCE, Meerut-II — Respondent

Present Sh. K.K. Anand, Sh. Gagan Kohli, Sh. S.K. Mathur and Sh. R.L. Thapaliayal, Advocates for the appellants

Present Shri I. Baig, AR for the respondent

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

Final order No. A/ 587 - 597/2012-Ex (DB)

~~Stay~~ Order No. 824 – 834 /2012– Ex (DB)

Per. Justice Ajit Bharihoke:

Shri I. Baig, ld. AR for the department has placed on record the report of Additional Commissioner of Central Excise, Meerut-II duly supported by his affidavit of the Deputy Commissioner, Central Excise, Meerut-II.

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. Perusal of the report dated 10.05.2002 of Additional Commissioner, Central Excise, Meerut as well as the affidavit of the Deputy Commissioner, Central Excise would show that although the reply of the main assessee M/s Balaji Aromatics as also M/s S.B. Aromatics was received in the office of the Commissionerate respectively vide entry No. 2341 and 4104 dated 30.03.2011, those were not submitted before the adjudicating authority who has passed the impugned order dated 14.06.2011. On perusal of the impugned order it transpires that above noted replies filed by the above two

appellant company were not considered while confirming the demand against them and imposing penalty under Rule 26 of the Central Excise Rules, 2002 on other appellants namely M/s Narbada Industres, Sh. Sanjeev Goyal, M.D. M/s Eldorado Holdings Pvt. Ltd., Rohit Kumar Agarwal, Atul Kumar, Director, Akash Traders, Vivek Kumar, Dinesh Kumar and Atul Kumar.

4. It is fairly conceded by Sh. I. Baig, ld. AR for the respondent that in view of the report submitted by the Additional Commissioner, Central Excise which is duly supported by the affidavit of Deputy Commissioner of Central Excise, Meerut-II, it is evident that principles of natural justice have not been followed by the Commissioner concerned inasmuch as that he has not been considered the replies filed by M/s Balaji Aromatics and M/s S.B. Aromatics before confirming the demand and imposing penalty on the various appellants. Thus, ld. AR has submitted that it would be appropriate if the appeals are accepted and the matters are remanded back to the Commissioner (Adjudication) in the context of the replies filed by the respective appellants and also after giving them due opportunity of being heard.

5. In view of the above, we find that this is a clear case of violation of principles of natural justice. Otherwise also Section 33A of the Central Excise Act, 1944 which provides for the adjudication procedure cast an obligation on the adjudicating authority to give an opportunity of being heard to the assessee if he so deserve. In the instant case, as it is evident from the report dated 10.05.2002 of Additional Commissioner, Central

Excise duly supported by an affidavit of the Deputy Commissioner, Central Excise Meerut the letters of the main assessee M/s Shree Balaji Aromatics Pvt. Ltd. as also of M/s S.B. Aromatics respectively dated 27.02.2011 and 30.03.2011 which were received in the Commissionerate on 28.02.2011 and 30.03.2011 were not submitted before the adjudicating authority for consideration, who passed the impugned order on 14.06.2011. From this it is obvious that the impugned order has been passed without considering the letters of the main assessee and the appellant M/s Shree Balaji Aromatics Pvt. Ltd. sent in response to the show cause notice. This in our view amounts to denial of opportunity of being heard to those appellants and also amounts to confirming the demand and imposing penalty without considering the defence of the appellant. Thus, we find it difficult to sustain the impugned order against the main assessee M/s Shree Balaji Aromatics Pvt. Ltd. as well as the appellant M/s S.B. Atomatics.

6. So far as the other appellants are concerned, they have been imposed penalty for abetting the evasion of excise duty by the main assessee under Rule 26 of the Central Excise Rules, 2002. As per Rule 26, the penalty on the abettor cannot exceed the amount of duty demand confirmed against the main assessee. Thus, it is obvious that the penalty under Rule 26 flows from the confirmation of demand against the main assessee. Since the impugned order against the main assessee is not sustainable the order imposing penalty under Rule 26 of the Central Excise Rules, 2002 against other appellant is also not sustainable. Accordingly, we accept all the appeals and set aside the impugned order. The matter is remanded back to the Commissioner

(Adjudication) for denovo adjudication in the context of reply filed by the respective appellants and also after giving due hearing to all the appellants.

7. Appeals as well as stay applications are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant