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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/2103/2011-EX[DB]
E/S/2758/2011-EX

Dated: **23/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
HINDUSTAN ENTERPRISES.,
H-145, SECTOR-1, DSIDC, BAWANA,
DELHI.

HINDUSTAN ENTERPRISES., (Appellant)

VS

C.C.E. DELHI I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/838/2012-EX[DB]** , Stay Order No. **SO/1108/2012** dated **19/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt 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. **Advocate(s) / Consultant(s):**
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 Publications 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

E/Stay/2758/2011 in &
Central Excise Appeal No. 2103/2011-Ex[DB]

[Arising out of Order-in-Appeal No. 38-40/CE/DLH/2011 dated 08.04.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-I, New Delhi]

Date of Hearing/decision: 19th July, 2012

M/s. Hindustan Enterprises — Appellant

Vs.

CCE, Delhi-I — Respondent

Present for the Appellant : Shri K.K. Anand, Advocate
Present for the Respondent : Shri R.K. Verma, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Rakesh Kumar, Technical Member

STAY ORDER No. 1108/2012-Ex(BR)
FINAL ORDER NO. A/1838/2012-Ex(BR)

Per D.N. Panda:

Learned Counsel says that a diary recovered in the course of investigation when became crucial evidence for Revenue the appellant had right to ask for cross-examination of the author of diary and evaluation of contents of the diary. On the earlier occasion there was direction by the Bench on 13.6.2012 for production of evidence by Revenue as to whether any notice was issued to Shri Brijesh Singh. According to the appellant Adjudicating Authority passed ex-parte order without affording opportunity of cross examination of Shri Brijesh Singh. Learned Commissioner (Appeals) did not deal this primary averment made by the appellant at first appellate stage. He merely concurred with the adjudication authority.

2. It is explained by the appellant that if the contents of diary is examined, without prejudice to the right of the appellant to cross-examination of Shri Brijesh Singh that shall establish that the appellant shall not suffer duty demand of Rs. 28,01,819/-. To reduce the dispute expeditiously the appellant has already cooperated Revenue with deposit of Rs. 5 lakhs during investigation. Learned D.R. also agrees to the said deposit.

3. On the aforesaid circumstances it is prayer of the appellant that the appellant should be heard in detail by the adjudication authority.

4. Learned D.R. on the other hand, relying on the statement recorded as is depicted in adjudication order submits that it was foolproof case of evasion and notice was issued to Shri Brijesh Singh for cross-examination but he did not receive the notice for which that was returned back. At this stage, it is submitted on behalf of the appellant that he was ignorant about issuance of notice for cross-examination for which the appellant was deprived to appear before the authority and to explain the case.

5. Revenue's further submission is that in no event the matter should be remanded. We do not consider that such proposition shall get sanction of the law, if the appellant is pressed into pressure of ex-parte order. We make it clear that the appellate authority should not be influenced by such averment. It is ordain of justice that both parties are equal before law and cannot be discriminately dealt. Therefore, we proceeded to work out an interim modality so that matter shall reach to its conclusion expeditiously.

6. We have perused the record and did not find evaluation of crucial evidence which is the diary in question claimed by Revenue to have been authored by Shri Brijesh Singh. Once the primary evidence is not evaluated there it is difficult to appreciate case of Revenue as foolproof case of evasion by appellant.

7. Considering that the appellant has already deposited Rs. 5 lakh as agreed by both sides, we do not propose to keep the matter pending in Tribunal. Therefore, we direct the appellant to make further deposit of Rs. 5 lakhs within 4 weeks hereof and produce the challan before learned Adjudicating Authority within two weeks thereof with an application for fixing date of hearing. On such compliance and application, the authority shall fix date of hearing expeditiously and grant fair opportunity of hearing to the appellant and pass appropriate order.

8. In the result stay application is disposed in the manner indicated above and appeal is remanded to the learned Adjudicating Authority.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK