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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/3871/2004 Date 07/03/2008

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 PUNJAB CHEMICAL & PHARMACUTICALS LTD. Respondent

I am directed to transmit herewith a certified copy of Final order No. 78/08 Excise dated 5-2-08 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 PUNJAB CHEMICAL & PHARMACUTICALS LTD.
   18 MILESTONE AMBALA KALKA ROAD, DERBASSI
2. Adv. / Consult SH. JOY KUMAR, ADV., FLAT NO. 261/1, SECTOR-45-A, CHANDIGARH
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT -II

EXCISE APPEAL No. 3871 of 2004

[Arising out of Order-in-Appeal No. 352/CE/CHD/2004 dated 6.5.2004 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. P. Karthikeyan, 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 would 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?	

CCE, Chandigarh — Appellant

Vs.

M/s. Punjab Chemicals & Pharmaceuticals Ltd. — Respondents

Appearance:

None for the appellants,
Shri Sanjay Kumar, SDR, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. P. Karthikeyan, Member (Technical)

Date of Hearing: 05.02.2008

FINAL ORDER NO. 78/08 dated 5/2/08

Per S.S. Kang:

Heard both sides.

2. Appeal is being taken up in view of the order dated 31st July, 2006 passed by the Hon'ble High Court of Punjab & Haryana. Hon'ble High Court has held as under:-

"In view of order of this Court dated 21.7.2006 in CEA No. 56 of 2005 (Commissioner of Central Excise, Delhi-IV, New CGO Complex, NH-IV, Faridabad v. M/s. Illpea Paramount Pvt. Ltd.), we allow this appeal, set aside order of the Tribunal and remand athe case to the Tribunal for a fresh decision on the question of levy of penalty. It is held that levy of penalty is warranted having regard to the requirements of the statute, the Tribunal will be bound to levy penalty equal to the amount of duty. Parties are directed to appear befor ethe Tribunal for further proceedings on October 9, 2006."

3. Contention of the Revenue is that in case of Ilpea Paramount Pvt. Ltd. which was remanded by the Hon'ble Punjab & Haryana High Court the Larger Bench of the Tribunal held that in case of suppression

of fact there is no discretion of the authority to reduce the penalty. Contention of the respondents is that there is no intention to evade payment of duty as the goods were being cleared to the related person and in case higher duty is paid by the respondents, the other person get the credit of the same amount. Demand was confirmed after invoking extended period of limitation on the ground of suppression. The respondents had not challenged the demand confirmed by invoking the extended period of limitation. Since there is an allegation of suppression the respondents are liable to penalty under Section 11AC and in view of the Larger Bench decision penalty should be equal to the demand. Accordingly, appeal filed by the Revenue is allowed as indicated above.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(P. KARTHIKEYAN)
MEMBER (TECHNICAL)

Dated 6th February, 2008

RK