TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2960/2004 Date 08/04/2008

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

To :
M/S NAHAR SPINNING MILLS LTD.
VILL-SIMRAI MANDIDEEP DISTT-RAISEN M.P

M/S NAHAR SPINNING MILLS LTD. Appellant
Vs
C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 136/08 **Excise** dated 28-3-08 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.BHOPAL
   178,BHAGYA BHAWAN ZONE-II,M.P.NAGAR
2. Adv. / Consult
   MR. Z.U. ALVI, ADV.,
   D-8, BDA COLONY
   KOH-E-FIZA, BHOPAL
3. C.D.R.
4. ~~I.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 AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Excise Appeal No. 2960 of 2004
[Arising out of order in appeal No. 302/CE/BPL/2004 dated 23.03.2004 passed by the Commissioner of Central Excise (Appeals), Bhopal]

Date of Hearing/ Decision: 28.03.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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.	: NO
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: NO
3. Whether Their Lordships wish to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental authorities?	: Yes

M/s Nahar Spinning Mills Limited
Appellant
[Rep. by Mr. Z.U. Alvi, Advocate]

Vs.

CCE, Bhopal
Respondent
[Rep. by Mr. C.S. Rajput, DR]

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL **ORDER** 136/08-EX.

Per M. Veeraiyan

This is an appeal against the order of the Commissioner (Appeals) dated 23.04.2004.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The appellant, a manufacturer of yarn falling under chapter 52 and 55 has cleared yarn on sale directly from the factory gate as well as cleared goods for selling from the depots.

(b) In respect of clearances made on sale at factory gate they claimed abatement of Rs. 2.75 per kg. on account of octroi/insurance/ forwarding charges and on production of evidence they were allowed abatement @ Rs. 1.75 per kg. as freight on average basis. The remaining Rs. 1/- per kg. which was claimed as cash discount was not allowed abatement for want of documentary evidence. Accordingly, original authority confirmed a demand of Rs. 20,179/- relating to the period April 199 to February 2000 which has been upheld by the Commissioner (Appeals).

4. Learned Advocate appearing for the appellant submits that in respect of the same assessee and on the same issue relating to clearances for sale through depots, the Tribunal vide their final order No. 373/2005-NB(A) dated 16. 3. 2005 allowed their appeal on merits.

5. We have carefully considered the submissions. The relevant portion of the order of the Tribunal dated 16. 3. 2005 cited supra is reproduced below:-

> "We have heard both sides. The appellants restrict their claim to those invoices bearing the endorsement of cash discount either typed or rubber stamped. Since the cash discount was known to buyers prior to the removal of the goods by way of the endorsement on the invoices, the appellants are entitled to deduction of cash discount from the assessable value in the light of the judgement of the Hon'ble Bombay High Court in the case of Goodlass Nerolac Paints Ltd., vs. UOI 1993 (65) ELT 186 (Bom.) affirmed by the Apex Court in 1993

> (73) ELT A58 and the judgement of the Hon'ble Karnataka High Court in the case of H&R Johnson (India) Ltd., vs. Central Board of Excise & Customs 1998 (101) ELT 251 (Kar.). We, therefore, hold that the appellants are entitled to deduction in respect of amounts covered by the invoices bearing endorsement of cash discount".

6. In view of the above, the orders of Commissioner (Appeals) and original authority are set aside and the matter remanded to the original authority to allow the cash discount subject to fulfillment of the conditions stipulated in the earlier order of the Tribunal dated 16.3.2005.

7. We allow the appeal by way of remand on the above terms.

(Operative part of the order was pronounced in the open Court)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]