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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/2322/2008 - EX[DB] & E/S/2311/08 Date 30/12/2008

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

To :
SHRI MAHENDRA SHARMA,
25-B, INDUSTRIAL AREA, MALANPUR, DISTT.
BHIND (M.P.)
SHRI MAHENDRA SHARMA, Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order** No.951/08 & S.O.NO.1299/08-EX dated 17-12-08 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.NAVEEN BINDAL,
   # 1640/1, SECTOR 40-B, CHANDIGARH.
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

M/S ~~C.T.COTTON YARN LTD. (100% EOU)~~
25~~-B, INDUSTRIAL AREA, MALANPUR, DISTT~~ BHIND (M.P.)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Stay Application No.2311 of 2008-Excise
Excise Appeal No.2322 of 2008

[Arising out of Order-in-Appeal No.10/IND/CEX/Commr./08 dated 08.07.2008 of the Commissioner of Customs & Central Excise, Indore]

Date of Hearing/ Decision:17.12.08

For approval and signature:
Hon'ble Mr.M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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?	:	No.
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

Shri Mahendra Sharma ...Appellants
[Rep. by Shri Naveen Bindal, Advocate]

Vs.

CCE, Indore ....Respondent
[Rep. by Shri Amit Jain, DR]

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

STAY Order No. 1299/08-EX/Dated:17.12.2008
FINAL ORDER NO. 951/08-EX

Per P.K. Das:

The applicant filed this application for waiver of pre-deposit of penalty of Rs.15 Lakhs.

2. After hearing both the sides and on perusal of the records, we find that the issue involved in this case is in narrow compass and, therefore, after granting stay, the appeal is taken up for hearing.

3. Ld. Advocate on behalf of the appellant submits that by Final Order No.932-933/08-Excise dated 11.11.2008, the Tribunal in respect of the main appellant (i.e. M/s.C.T. Cotton Yarn Limited) and its Managing Director decided the case. In the case of main noticee i.e. M/s. C.T. Cotton Yarn Limited, the assessment is confirmed except being remanded the matter to the Adjudicating Authority for fresh decision in respect of levy of penalty in setting aside the impugned order. In the case of appeal of Managing Director, the Tribunal passed order as under:-

> "8. This is a consequential appeal which arose out of Appeal case No.1982 of 2008. In view of certain findings, the learned assessing authority imposed penalty of Rs.100,00,000/- (Rupees one crore only) under Rule 26 of Central Excise Rules, 2002 on the appellant in this appeal. Similarly, learned Assessing Authority has also imposed penalty of Rs.50,00,000/- (Rupees Fifty Lakhs Only) under Section 112 of Customs act, 1962.
>
> 9. The appellant pleads that penalties imposed were severe and when the appellant is sick financially and facing recovery proceeding before financial institutions, levy of deterrent penalty would be harsh since the appellant admits duty liabilities to the extent aforesaid in appeal case No.1982/2008. Learned Counsel prays that

penalty levied may be reconsidered in de novo proceeding when the matter goes back for deciding double taxation issue. In view of such pleadings, learned Adjudicating Authority may reconsider the quantum aspect afresh in this appeal.

10. In view of our aforesaid observations and conclusion, dispensing pre-deposit, in this case also, appeal has been disposed of in the manner indicated above, remanding back the matter to the learned adjudicating authority for fresh adjudication in respect of levy of penalty on this appellant.

4. We find that the appeal of the Managing Director was disposed of by way of remand. In view of that, in our view, the matter in respect of appellant, being Manager of the main noticee, is required to be examined by the Adjudicating Authority. Accordingly, the imposition of penalty against the appellant is set aside and the matter is remanded back to the Adjudicating Authority to decide afresh along with the case of the Managing Director, Shri Ashwani Deewan. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 17.12.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.