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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/1273/2001 - EX[DB]

Date 16/12/2008

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

To :
I.B.P.COMPANY LTD.
VEDVYASPURI, PARTAPUR, MEERUT(UP)

I.B.P.COMPANY LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 927/2008- EX[DB]** dated 04-12-08

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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult SH. ABHISHEK JAJU, ADV.,
R-163, IIND FLOOR,
G.K. PART-I, N. DELHI-48
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 1273 of 2001

M/s I.B.P. Co. Ltd. — Appellant
[Shri Abhishek Jaju, Advocate]

Versus

CCE, Meerut — Respondent
[Shri S. Shah, Auth. Rep. (DR)]

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 02/12/2008.

Final Order No. 927/08-Ex Dated :

Per. D.N. Panda :-

Learned counsel appearing on behalf of appellant submits that the duty demand has arisen due to invoking of Section 11D of the Central Excise Act, 1944 (hereinafter referred to as "the Act") by order dated 01/03/01 passed by Commissioner of Central Excise, Meerut – I. He submits that this appellant was a registered dealer and had dealt the excisable goods at the second stage of removal of goods beyond the point of clearance. He submits that following the decision in the case of **Bharat Petroleum Corporation Ltd. vs. CCE, Meerut** reported in **2002 (146) E.L.T. 646 (Tri. – Del.)** and **Sr. Terminal Manager, I.O.C. Ltd. vs. CCE, Coimbatore** reported in **2007 (212) E.L.T. 536 (Tri. – Chennai)**, held that a registered dealer should not be liable to duty since he is not a manufacturer.

2. Learned DR submits that the appellant has realized over and above sales price. The sale price which is reflected by page 68 of the paper book, forming part of the show cause notice, shows excess realisation by the appellant and that was not deposited into the treasury. This has attracted Section 11D of the Act. Accordingly the adjudication order may be confirmed.

3. Heard both sides and perused the record. We have gone through page 4 of the order of adjudication. There is no dispute by the revenue that the present appellant is a registered dealer. We are unable to notice whether the registered dealer was by any means liable to pay duty when he is not a manufacturer. We also fail to understand that an

assessee who is a registered dealer and not liable to be dealt by Section 11D of the Act how he is made liable under such provision. Therefore, considering the citations made by the learned counsel, we are of the opinion that the appellant being a public sector undertaking cannot be held to have acted in define of the law. Therefore we hold that the levy imposed on the appellant is unsustainable. Accordingly, appeal of the appellant is allowed, setting aside the impugned order. Consequently relief, if any, shall follow in accordance with law subject to verification of record.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK