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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/6211/2004 - EX[DB] Date 16/12/2008

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

To : DY. G.M.(TAXATION)
M/S BHARAT HEAVY ELECTRICALS LTD.

BLOCK-VI ANEX WWGF,P.O.PIPLANI BHOPAL

M/S BHARAT HEAVY ELECTRICALS LTD. Appellant

Vs

C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 926/2008-EX[DB] dated 08-12-08

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.BHOPAL

   OPP.MAIDA MILLS,HOSHANGABAD ROAD,BHOPAL
2. Adv. / Consult

   MR.Z. U. ALVI

   D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

3 S.D.R

~~4 JCDR.~~

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

COURT – III

EXCISE APPEAL NO. 6211 OF 2004

[Arising out Order-in-Appeal No. 303-CE/BPL/2004 dated 9.9.2004 passed by the Commissioner of Customs & Central Excise (Appeals-I), Bhopal]

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 the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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. Bharat Heavy Electricals Ltd., Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Shri Z.U. Alvi, Advocate, for the appellant;
Shri K.K. Goel, Departmental Representative, for the Revenue,

Coram:

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

Date of hearing/decision: 08.12 2008

FINAL ORDER NO. 926/2008-EX **dated** ______

Per M. VEERAIYAN:

This is an appeal against the order of the Commissioner (Appeals) order No. 303-CE/BPL/2004 dated 9.9.2004.

2. Heard both sides.

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

On the basis of examination of RT-12 Returns for the period April, 1998 to March, 1999, show cause notice was issued, inter alia, demanding duty of Rs. 14,88,391/- in respect of goods which have been received by the appellant under Rule 173H and re-cleared by them. Show cause notice merely alleged that goods were cleared without following the procedure prescribed under Rule 173H. The original authority confirmed the demand as per show cause notice. The Commissioner (Appeals) has upheld the order of the original authority.

4.1. Learned Advocate submits that they have manufactured sophisticated engineering goods and cleared them and unexpected need of repair of goods supplied by them occurred periodically. The department has accepted the difficulties faced by the appellant in linking up the original duty paid documents and permitted relaxation from time to time.

4.2. He relies on one such relaxation given by the Asst. Commissioner vide his letter dated 20.1.2000. By the said letter the requirement of third proviso to sub-rule (2) of Rule 173H for bringing in the goods which are not accompanied by duty paying documents whether manufactured by BHEL or not was permitted. It also extended the time limit prescribed in the said rule. It also relied upon the trade notice issued in 1992 by Indore Commissionerate and later by the Bhopal Commissionerate.

4.3. He submits that in the light of above demand of duty on goods received for repair and returned under Rule 173H is not legal and not proper. It was also submitted that while undertaking repairs whenever certain components were replaced duty on such components have been paid by the appellant.

5. Learned Jt. CDR took us through Rule 173H and Rule 173L. He also took us through the findings of the original authority and that of the Commissioner (Appeals) and seeks confirmation of the demand.

6. We have carefully considered the submissions. The allegation in the show cause notice is very cryptic and vague. It is not disputed that the goods have been received under Rule 173H and that the appellant has undertaken certain repairs. It was also submitted by the appellant that while undertaking the repairs, whenever certain components were replaced duty on such components have been paid by the appellant. We also note that the difficulty of the appellant who is manufacturing heavy electrical equipment in following the provisions of Rule 173H appears to have been noted by the Commissionerate from 1992 onwards and relaxation has been permitted. The infraction, if any, in following the

procedure, can not lead to a conclusion that the goods which are cleared as repaired goods were actually freshly manufactured goods and cleared under the garb of goods received under Rule 173H. No such allegations or findings have been made. Under these circumstances we are not in a position to uphold the demand.

7. We set aside the order of the lower authorities and allow the appeal with consequential relief.

(Dictated & pronounced in the Open Court.)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK