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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/5125/2004 - EX[DB] Date 27/11/2008

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

To :
M/S NAHAR SPINNING MILLS LTD.
VILL. SIMRAI, MANDIDEEP, DIST. 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**. 890/2008- EX[DB] dated 25-11-08 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
   48, ADMINISTRATIVE AREA, AREA HILLS, HOSHANGABAD ROAD, BHOPAL (M.P.)
2. Adv. / Consult SH. Z. U. ALVI, ADV.
   C/O APPELLANT

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), Thyagarava 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.5125/2004 –Ex(Br)

(Arising out of order in appeal No.509/CE/BPL/04 dated 7.7.04 passed by the Commissioner of Central Excise (Appeals), Bhopal)

M/s Nahar Spinning Mills Ltd — Appellant
(Rep. by Shri Z.V. Alvi, Advocate)

Vs

CCE, Bhopal — Respondent
(Rep. by Shri Virinder Choudhary , DR)

Coram: Hon'ble Mr.D.N. Panda, Member(Judicial)
Hon'ble Mr. Rakesh Kumar, Member(Technical)

Date of Hearing:14.11.08

Final Order No. 890 /2008-Ex(BR)

Per D.N. Panda:

Appellant's limited grievance is that Rs.35,233/- paid as AED if adjusted against the Basic Duty, the appellant shall have no grievance and once such adjustment is allowed, there should be no penalty. He relies on the judgment in the case of South Asian Petrochem Ltd Vs CC (Airport & Admn), Kolkata reported in 2007 (219) ELT 991 (Kol.) for his argument.

2. The learned DR supports the appellate order and prays for no interference.

3. Heard both the sides and perused the records.

4. We also subscribe to the view that the same Excise and Customs authorities who administer the law in respect of the levies arising on administration of different statutes, they should not bar appellants from adjustment of duty paid under one head to another head if any adjustment of

excess duty payment arises and not otherwise barred by law. View of Kolkata Bench in the case of South Asian Petrochem Ltd (supra) appears to be of considerable value. Since money has gone to the treasury of Union of India, treating the appellants differently shall be of no avail. We therefore allow the appeal directing the Authority below to permit adjustment of aforesaid amount in accordance with law and penalty imposed is waived. Consequential relief, if any, shall be admissible in accordance with law.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

MPS*