

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

Appeal No. E/5644/2004 - EX[DB]

Date 07/01/2009

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

To :
C.C.E MEERUT-I

UNIVERSITY ROAD, MANGAL PANDEY
NAGAR, MEERUT
C.C.E MEERUT-I

M/S AMRIT VERSHA UDYOG LTD

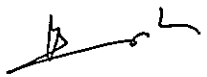
Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 16/2009-

EX[DB] dated 02-1-09

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S AMRIT VERSHA UDYOG LTD

D-I, INDL AREA, JASODHARPUR KOTDWAR

2. Adv. / Consult

SH. AALOK ARORA, ADV.,
OPP. TELEPHONE EXCHANGE,
SAHARANPUR-247000

3 S.D.R

4 J.C.D.B.

5 Bar association, CESTAT, New Delhi

6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7 M/s Centax Publications (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

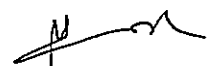
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai

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-15

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. I
Excise Appeal No. 5644 of 2004**

[Arising out of the Order-in-Appeal No. 541/CE/MRT-I/
2004 dated 13/09/2004 passed by The Commissioner
(Appeals), Central Excise, Meerut – I.]

For Approval and signature :

Hon'ble Ms. Jyoti Balasunderam, Vice President

Hon'ble Mr. Rakesh Kumar, Member (Technical)

-
1. Whether Press Reporters may be allowed to see : *No*
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
 2. Whether it would be released under Rule 27 of : *No*
the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
 3. Whether their Lordships wish to see the fair : *seen*
copy of the order?
 4. Whether order is to be circulated to the : *yes*
Department Authorities?

CCE, Meerut – I

Appellant

Versus

M/s Amrit Versha Udyog Ltd.

Respondent

Appearance

Shri Amit Jain, Authorized Representative (DR) – for the
appellant.

None – for the Respondent.

CORAM: Hon'ble Ms. Jyoti Balasunderam, Vice President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 01/01/2009.

~~Final~~ Order No. 16 / 09 - Ex Dated : _____

Per. Ms. Jyoti Balasunderam :-

In this case the Additional Commissioner of Central Excise confirmed duty demand of Rs. 45,15,054/- (Rupees Forty Five Lakh Fifteen Thousand Fifty Four only) and imposed penalty of equal amount upon the assessee under the provisions of Rule 96 ZO 3 (ii) of the Central Excise Rules, 1944 ; The Commissioner (Appeals) while upholding the duty demand, reduced the penalty to Rs. 3,00,000/- (Rupees Three Lakh only), and hence this appeal by the Revenue on the grounds that once the penalty ^{is held} has to be imposable, it cannot be less than the duty amount.

2. Although the respondent wants short adjournment, we find there is no need ^{to} for adjourned the matter for the reasons ~~that the issue~~ stands covered by the Apex Court decision in the case of **Union of India vs. M/s Dharamendra Textile Processors**

reported in **2008 – TIOL – 192 – SC – CX – LB** holding that ^{both} filing under Section 11AC of the Act as well as under Rule 96 ZQ and 96 ZO, there is no scope for any discretion in the quantum of penalty and that penalty cannot be reduced below the duty amount confirmed. Following the ratio of the above judgment, we set aside the impugned order and restored the Additional Commissioner's orders relating to imposition of penalty of Rs. 45,15,054/- (Rupees Forty Five Lakh Fifteen Thousand Fifty Four only) and allow the appeal of the Revenue.

(Dictated and pronounced in open court)

(Ms. Jyoti Balasundaram)
Vice President

(Rakesh Kumar)
Member (Technical)

PK