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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/6047/2004 - EX[DB]   Date 20/02/2009

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

To :
M/S NAHAR SPINNING MILLS LTD.
VILL-SIMRAI,MANDIDEEP DISTT.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.** 141/2009- **EX[DB]** dated 18-2-09

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
   178 BHAGYA BHAWAN,ZONE-II M.P.NAGAR BHOPAL M.P.
2. Adv. / Consult
   SH. Z. V. ALVI, ADV.,
   C/O. S.K. BANSAL,
   144, SECTOR-A,
   INDRAPURI, BHOPAL (MP)
3. C.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-15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:18.2.2009

Central Excise Appeal No.6047 of 2004

Arising out of the order in appeal No.724/CE/BPL/2004 dated 28.10.04 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant — Respondent

M/s Nahar Spinning Mills Ltd. vs. C.C.E., Bhopal

Appearance:

Shri Z.V. Alvi, Advocate for the appellant
Shri A.K. Rastogi, Authorized Departmental Representative (DR) for the Revenue

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

FINAL Order No. 141/2009/EX.

Per M. Veeraiyan:

This is an appeal against the order of Commissioner (Appeals) No.724/CE/BPL/2004 dated 28.10.04 by which duty amount of Rs.23,215/- which was confirmed by the original authority was upheld and the penalty of Rs.5,000/- was sustained.

2. On hearing both sides, we find that the appellant received duty paid lubricating oil and used them for the intended purpose that is lubricating the machines and after the said use , the oil lost its capacity of lubrication and the same was cleared as waste oil. It is found that 11800 litres of burn oil/oil waste valued at Rs.1,45,093/- were cleared.

3. Show cause notice was issued holding that no classification list was filed and the goods were cleared without payment of duty. However, we find that demand has been confirmed treating the lubricating oil as having been cleared as such. The order of the original authority as well as the order of the Commissioner (Appeals) are beyond the show cause notice. Further, we are not in agreement with the view taken by the authorities below that waste oil should be treated as clearance of "lubricating oil as such".

4. Further, learned Advocate submits that in their own case for earlier period, the Tribunal vide Final Order No.534/05-Ex. dated 12.7.05 in Appeal No.E/1769/05-C has allowed the appeal of the party.

5. In view of the above, we allow this appeal with consequential relief.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/