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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/492 /2008 - EX[DB] Date 27/02/2009

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant
Vs
M/S COMBI ORGANOCHEM LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 149/2009-**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
   M/S COMBI ORGANOCHEM LTD.
   BHIMTAL,NAINITAL (UTTARANCHAL)
2. Adv. / Consult SH. NAVEEN MULLICK, ADV.,
   B-388, MEERA BAGH,
   N. DELHI-63
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.492 of 2008 -Excise Branch

[Arising out of Order-in-Appeal No.253-CE/MRT-II/2007 dated 30.11.2007 passed by the Commissioner of Central Excise (Appeals), Meerut]

Date of Hearing/ Decision:18.02.09

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 CESTAT (Procedure) Rules, 1982.		No
2.	Whether it should 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

CCE, Meerut-II ...Appellants
[Rep. by Shri B.S. Suhag, DR]

Vs.

M/s. Combi Organochem Ltd. ...Respondent
[Rep. by Shri Naveen Mullick, Advocate]

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

FINAL Order No...149/09-EX.../Dated:18.02.2009

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) by which the order of the Original Authority, which was also in favour of the party, was upheld.

2. The Committee of Commissioners examined the order of the Commissioner (Appeals). Commissioner, Meerut-II, in whose jurisdiction the unit came, held the view that the appeal should be filed. However, the other member of the Committee viz. Commissioner, Meerut-I felt that the appeal need not be filed. The decision was taken in January 2008.

3. In view of the difference in view taken by the members of the Committee, in pursuance of the Board's Circular No.825/2/2006-CX dated 6.2.2006, the decision was taken to file appeal and accordingly, appeal was filed.

4. Ld. Advocate raised a preliminary objection that there is no valid opinion of the Committee of Commissioners in terms of Section 35 B (2) enabling the Commissioner to file an appeal. The Board's directions that in cases of difference of onion, an appeal should necessarily be filed is beyond the provisions of law. Subsequently an amendment has been brought about w.e.f. May/98 enabling that in such cases, the matter will be referred to the jurisdictional Chief Commissioner and whose decision will be binding for the purpose of filing appeal. He also relies on the decision of the Tribunal in the case of Commissioner of Central Excise, Coimbatore Vs. L.G. Balakrishnan & Bros. Ltd. reported 2007 (211) E.L.T. 248 (Tribunal-Chennai), wherein the appeal filed passed on such difference of opinion among the Committee Commissioners has been disposed of in favour of the party.

5. Ld. DR reiterates the grounds of appeal.

6. We have carefully considered the submissions from both sides.

7. At the outset, we note that the original authority as well as Commissioner (Appeals) have taken a decision in favour of the party. One of the Commissioners sitting in the Committee has also felt that the order of the Commissioner (Appeals) does not require to be appealed against. The procedure prescribed by the Board is not supported by legal provisions during the relevant time. Further, in the present case, the decision by the original authority, the decision of Commissioner (Appeals) and view of one of the Commissioners of the Committee are favouring the party. We do not find any justification whatsoever to interfere with the order of the Commissioner (Appeals).

8. We reject the appeal of the Department on the preliminary issue raised by the respondent.

Order dictated & pronounced in open court on 18.02.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.