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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/5704/2004 - EX[DB] Date 26/02/2009

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

To :
C.C.E.KANPUR
117/7 SARVODAYA NAGAR,KANPUR

C.C.E.KANPUR Appellant

Vs

M/S ATUL GENERATORS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 172/2009- **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 ATUL GENERATORS PVT.LTD.
NUNHAI AGRA
282006
2. Adv. / Consult SH. ATUL GUPTA,
B-1/1289-A, VASANT KUNJ,
N. DELHI - 70
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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH, NEW DELHI, COURT NO.I**

**Excise Appeal No. 5704 of 2004**

[Arising out of order-in-Original No. 397/CE/APPL/Knp./2004 dated 30.07.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur]

Date of Hearing/Decision : 18.02.2009

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. | |
| 2 | Whether it should be released under Rule 27 of the 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? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | Yes |

CCE, Kanpur — Appellant
[Rep. by Mr. C.S. Rajput, DR]

Versus

M/s Atul Generators Pvt. Ltd., — Respondent
[Rep. by Mr. Atul Gupta, Co. Secy.]

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

FINAL Order 172/09-EX

**Per P.K. Das**

Revenue filed this appeal against the Order-in-Appeal No. 397/CE/APPL/Knp./2004 dated 30.07.2004.

2. Heard both sides and perused the record.

3. The relevant facts of the case, in brief are that the respondent are engaged in the manufacture of dutiable and exempted goods. They were required to pay 8% of the amount equivalent to the price of the exempted goods at the time of clearance. It has been held by the original authority that the respondent collected the same amount of 8% from the customers. Commissioner has modified the adjudication order in so far as demand of the said amount was set aside and penalty was reduced to Rs. 10,000/-.

4. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

> "As per the said decision, it is crystal clear that there is no mistake on the part of the appellants. Further, the appellants also contended that even if it is presumed that they had collected the amount reversed by them from the customs. Since the amount so collected is price, they had accordingly deposited the 8% of the amount so collected with interest. In this regard, I agree with the contention to the appellants that the amount reversed can not be termed as Central Excise duty as per provision of Rule 57-CC. The amount so collected by the appellants is nothing but price. If it is a price, the appellants are required to pay 8% of the total price to fill the requirements of the Rule 57-CC. I observe that the appellants had paid the 8% of the amount to so collected alongwith the interest and therefore the ingredients of Rule 57-CC/57-AD stands satisfied. However, contravention of Rule to this extent is proved on the part of the appellants.
>
> I, therefore, modify the impugned order-in-originals and set-aside the demand of Rs. 12,19,316/-. The penalty imposed is also reduced to Rs. 10,000/- on the appellants. The appeal as above is disposed off accordingly".

5. We find that on the identical issue the Tribunal in the case of Ganga Engineers vs. CCE, Kanpur reported in 2008 (232) ELT 328 (Tri. Del.) held in favour of the assessee. The relevant portion of the decision is reproduced below:-

> **"8.** The relevant portion of clarification of the Board on this issue is as follows:
>
> > In the light of what is stated above, it is clarified that "4. as long as the amount of 8% or 10% is paid to the Government in terms of erstwhile Rule 57CC of the Central Excise Rules, 1944 or Rule 6 of the Cenvat Credit Rules, the provisions of Section 11D shall not apply even if the amount is recovered from the buyers. However, it may be noted that the Cenvat credit of the said amount of 8% or 10% cannot be taken by the buyer since such payment is not a payment of duty in terms of Rule 3(1) of the Cenvat Credit Rules, 2004. Therefore, the said 10% amount should be shown in the invoice as "10% amount paid under Rule 6 of the Cenvat Credit Rules, 2004".
>
> **9.** In the light of the above, we are in agreement with the views expressed by the learned Advocate for the assessee. Accordingly, we allow the appeal by the assessee with consequential relief and reject the appeal by the Department."

6. In view of the abode decisions, we do not find any merit in the appeal filed by the Revenue. Accordingly the appeal filed by the Revenue is rejected.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member (Technical)

[P.K. Das]
Member (Judicial)

[Pant]