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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/328 /2009-329 /2009 - EX[DB]

Date 23/04/2009

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

To :
M/S SHREYANS INDUSTRIES LTD.
V.P.O.BANAH, TEHSIL BALACHAUR,DISTT.
NAWANSHAHAR.
M/S SHREYANS INDUSTRIES LTD.

Appellant
Vs
C.C.E. JALLANDHAR (HQ. AT CHANDIGARH)
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 270-271 & SO No. 324-325 – EX [DB]** dated 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.VIKRANT KACHRIA, ADVOOCATE
   509, SEC-7, PANCHKULA, HARYANA

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.2(Old No. 36), Vaithyaram Street, 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 LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. SPS to Hon'ble President.

Assistant Registrar
(Excise Appeal Branch)

M/S SHREYANS INDUSTRIES LTD.
V.P.O.BANAH,TEHSIL BALACHAUR,
DISTT. NAWANSHAHAR.

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 Nos. 328-329 of 2009

[Arising out of the Order-in-Appeal No. 743-744/CE/Jal/2008 dated 12/11/2008 passed by The Commissioner (Appeals), Central Excise, Jalandhar.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it would 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?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	No

M/s Shreyans Industries — Appellant

Versus

CCE, Jalandhar — Respondent

Appearance

Shri Vikrant Kachria, Advocate – for the appellant.

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

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING/DECISION : 18/03/2009.

FINAL Oral Order No. 270-271/09-Del Dated : ____________

Per. Justice R.M.S. Khandeparkar :-

Since, common points of law and facts arise in both the appeals, they were taken together and are being disposed by this common order.

2. Heard the learned Advocate for the appellant and learned DR. In view of the facts brought to our notice in the course of hearing, we find no purpose would be served by keeping the appeals pending. The facts of the case clearly justify disposal of the appeals at this stage itself. Hence the learned Advocate for the appellant and the learned DR were heard at length in the matter.

3. It is not necessary to go into various issues sought to be raised in the appeals and it would suffice to refer to the point in relation to failure on the part of lower Appellate Authority to give opportunity to the appellant of addressing on the issue, as to whether there is sufficient evidence on records to decide the matter. The Original Authority while dealing with the matter imposed penalty and confirmed the demand for interest solely on the ground that he does not agree with the contention of the appellant that once the value of the goods is determined at the time of removal at the factory gate, then the value at which the goods were sold at the premises of consignment agent becomes totally irrelevant. However the Original Authority did not consider the point as to whether there is sufficient evidence on record to show that the appellant had paid the Excise Duty on correct value or not i.e. on the value of the goods at the consignment agent's premises at the time of removal from the factory. The Commissioner (Appeals) while dealing with the appeal filed by the appellant, while agreeing with the contention of the appellant that they were not liable to pay any

differential duty on the difference between the price at the time of removal of the goods and price at which the goods were ultimately sold from the consignment agent's premises, has rejected the appeals on the ground that at no stage the appellant had produced any evidence to show that they had paid the Excise Duty on correct value of the goods. Apart from the impugned order not being based on the evidence on record, the order passed by the Original Authority reveals that the appellant had presented certain documentary evidence in support of their claim that duty had been paid by them on correct value and in view of this it was necessary for the Original Authority to deal with the said issue before confirming the demand; however it failed to do so. The Appellate Authority proceeded to deal with said issue without giving any opportunity to the appellant to produce the evidence, if any, they so desired.

4. The lower Appellate Authority has accepted the contention of the appellant and rightly so, that the appellants, in terms of the provisions of Rule 7 of the Valuation Rules, were not liable to pay any differential duty on the difference between the price at the time of removal of the goods and price at which the goods were ultimately sold from the consignment agent's premises. In view of the same, the Appellant's plea that they had paid duty on the correct value should have been examined on the basis of evidence on record. We find no such exercise was done. On this ground itself the impugned order is liable to be set aside and the matter must be remanded to the original adjudicating authority to deal with the aspect as to whether there is sufficient evidence on record to establish that the Appellant had paid excise duty on the correct value.

5. With the above observations, the impugned order is hereby set aside alongwith the order passed by the Original Authority and the matter is remanded to the Original Authority to deal with the same bearing in mind the observations hereinabove. Considering the fact that the show cause notice was issued in the year 2007, the Original Authority should dispose of the matter as expeditiously as possible.

6. The appeals stand disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK

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 Stay Application Nos. 341-342 of 2009

M/s Shreyans Industries Appellant

Versus

CCE, Jalandhar Respondent

Appearance

Shri Vikrant Kachria, Advocate – for the appellant.

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

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING/DECISION : 18/03/2009.

STAY Oral Order No. 324-325/09 Dated : ____________

Per. Justice R.M.S. Khandeparkar :-

In view of the disposal of the appeals, the stay application does not survive and stands disposed off.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK