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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/855 /2009 - EX[DB]
E/S/836/2009

Date 03/06/2009

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

To :
M/S TRIVENI ENGG. & INDUSTRIES LTD.
KHATAULI, DISTT. MUZAFARNAGAR.
M/S TRIVENI ENGG. & INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT I STAYORDER NO.486/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 397/2009-EX[DB]** dated 29-5-09

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. MEERUT I
EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.R. KRISHNAN
297-E, POCKET-II, PHASE-I, DELHI-110 091.

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
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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:29.5.2009

Stay Application No.836 of 2009 in
Central Excise Appeal No.855 of 2009

Arising out of the order in appeal No.05/CE-CE/MRT-I/2009 dated 28.1.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut I.
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?	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

M/s Triveni Engineering & Industries Ltd. .... Appellant

Vs.

C.C.E., Meerut I .... Respondent

Appearance:

Shri R.Krishnan, Advocate for the appellants/applicants
Shri R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

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

STAY Oral Order No. 486/09-EX
FINAL ORDER NO 397/09-EX
Per M. Veeraiyan:

Heard both sides for a while on the stay petition. We felt that it is expedient to decide the appeal on a short point. Accordingly, we waive pre-deposit of dues as per impugned order and proceed to dispose of the appeal.

2. The appellant procured capital goods and took credit and utilised the said capital goods for several years and "old and discarded capital goods" had been removed on sale as scrap. The original authority held that duty of Rs.8,94,641/- is recoverable on the said old and discarded capital goods

along with interest and imposed equal amount as penalty. The disputed duty amount stands paid by the appellant. When the matter was taken on appeal before Commissioner (Appeals), Commissioner (Appeals) directed the appellant to deposit a sum of Rs.2 lakhs towards penalty and for failure to comply with the said terms of pre-deposit, the appeal has been dismissed.

3. Learned Advocate submits that they have a strong case in their favour on merits and at any rate, no penalty is imposable on them. Therefore, the order of pre-deposit by the Commissioner (Appeals) was not justified. The application for modification of the stay order has also been rejected by the Commissioner (Appeals).

4. Learned DR reiterates the finding of the Commissioner (Appeals).

5. We have carefully considered the submissions and perused the records. Considering the nature of the dispute involved, we are of the considered view that the Commissioner (Appeals) has to decide this matter on merits. To enable the same, we set aside the order of the Commissioner (Appeals) and remand the same for de novo consideration without insisting on pre-deposit of any amount towards penalty. We add that we do not express any views on merits. The appeal shall be disposed of after giving reasonable opportunity of hearing to the appellant.

6. The appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/