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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/1089/2009 - EX[DB] Date 22/07/2009
E/S/1059/2009-EX

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

To :
M/S AMEYA PACKAGING,

B-2A, INDUSTRIAL AREA, SELAKUI, DEHRADUN.

M/S AMEYA PACKAGING, Appellant

Vs

C.C.E. MEERUT I STAY ORDER NO.728/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.**477/2009-**EX[DB]** dated 10-7-09

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.RAJESH GUPTA, ACA
   SHOP NO 2,FIRST FLOOR, SHALEEN ARCADE, 21-NEW ROAD, DEHRADUN.

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
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1089 /2009- Ex(BR), and
Excise Stay Application No. 1059 /2009- Ex(BR)

[Arising out of Order-in-Appeal No. 45-CE/MRT-I/2009 dated 31.3.2009 both passed by Commissioner (Appeals), Customs & Central Excise, Meerut I]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	No

M/s. Ameya Packaging — Appellant
[Rep. by Mr.Rajesh Gupta, Chartered Accountant]

Vs.

Commissioner of Central Excise Meerut I — Respondent
[Rep. by Shri Surender Shah, DR]

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 10.7.2009

STAY **ORAL ORDER NO.** 728/09-EX
FINAL ORAL ORDER No. 477/09-EX

Per Justice R.M.S. Khandeparkar (for the Bench):

Heard. This is an application for stay of order dated 30.6.07 passed by the Additional Commissioner and order dated 31.3.09 passed by the Commissioner (Appeals).

2. Perusal of the impugned order passed by the Commissioner (Appeals) disclose that same has been passed merely on account of failure on the part of the appellant to deposit the duty ~~demand~~ demanded in terms of section 35F of the Central Excise Act, 1944.

3. Apart from various contentions sought to be raised in the matter, we find that original authority while dealing with the matter had virtually ignored one important aspect of the matter which relate to allegation of discriminating treatment to the appellant by the Department inasmuch as that in similar such case in the matter of M/s. Beston Power Source Industries, D-21, Bahadrabad Industrial Area, Haridwar, the authority had imposed penalty of Rs. 2,500/- for non-compliance of provisions of Notification No. 50/2003 CE dated 10.6.2003. In the case in hand, the main allegation against the appellant also relates to violation of the conditions of the said Notification and there is imposition of duty to the tune of Rs.21,95,349/- besides interest and penalty. The original authority has merely made observation that the decision of Beston Power Source Industries was made in different set of facts and that the order of original

authority is not binding on the adjudicating authority, and has not dealt with the contentions which were sought to be raised on behalf of the appellant in that regard. Instead of merely dismissing the appeal for non-compliance of provisions of section 35 F, the Commissioner (Appeals) has to deal with the matter on merits. In fact considering the said ground sought to be raised by the appellant, it was a clear case for total waiver of the duty during the pendency of the appeal.

4. Be it as it may, suffice to say that in the circumstances of the case, the impugned order cannot be sustained and is liable to be set aside and therefore, no purpose would be served by merely dealing with the stay application. We therefore dispose of the appeal itself along with the application for stay.

5. For the reasons stated above, therefore the appeal succeeds. The impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to deal with the appeal on merits without insisting for deposit of the amount demanded under the order passed by the lower authorities. Commissioner (Appeals) shall dispose of the appeal on merits dealing with all the points which are sought to be raised in the matter. We make it clear that above observations shall not be treated as a final decision on the issue relating to alleged discrimination and the Commissioner (Appeals) shall decide the appeal independently and on the basis of records and shall arrive at the correct finding in that regard. In the result therefore, the appeal is allowed after setting aside the impugned order. In the above terms, the

matter is remanded to the Commissioner (Appeals) to deal with the appeal on merits bearing in mind the observations made hereinabove.

6. The appeal and stay application stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan
Member(Technical)

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