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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/1075/1995 - EX[DB]   Date 28/08/2009

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

To :
M/S INTERNATIONAL CYLINDERS(P) LTD
20, INDUSTRIAL AREA, GONDPUR POUNTA SAHIB
(H.P)

M/S INTERNATIONAL CYLINDERS(P) LTD   Appellant
Vs
CCE CHANDIGARH   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 565/2009- **EX[DB]** dated 25-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   CCE CHANDIGARH
2. Adv. / Consult
   MR.B.L.NARSIMHAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No.1075 of 95 -Excise Branch

[Arising out of Order-in-Original No.19-CE/95 dated 8.3.95 passed by the Collector of Central Excise, Chandigarh]

Date of Hearing/ Decision:25.08.2009

For approval and signature:

Hon'ble Dr. Chittaranjan Satapathy, Technical Member
Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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?	:	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. International Cylinders (P) Ltd. ...Appellant
(Rep. by Shri B.L. Narsimhan, Advocate)

Vs.

CCE, Chandigarh ....Respondent
(Rep. by Shri R.K. Verma, DR)

CORAM: **Hon'ble Dr. Chittaranjan Satapathy, Technical Member**
Hon'ble Mr. P.K. Das, Member Judicial

FINAL Order No.565/09-EX/Dated:25.08.2009

Per Dr. Chittaranjan Satapathy:

Heard both sides.

2. We find that in this case, the Tribunal had allowed the benefit of doubt to the appellants and had set aside the impugned order passed by the adjudicating Commissioner vide International Cylinders Private Ltd.

Vs. CCE, Chandigarh – 1999 (112) ELT 584 (Tribunal). Subsequently, the Department filed a reference application in the Hon'ble High Court of Himachal Pradesh and the Hon'ble High Court by Order dated 15.09.2008 had held as follows:-

> " No law can be interpreted in a manner so as to give premium to illegal and criminal activities. It is a basic sense that no person will maintain authentic records of the illegal activities or manufacture being done by it. In the present case, there are certain facts which the department has proved and which have been upheld by the Tribunal itself; (i) that a large number of trucks belonging to the company crossed the octori/sales tax/excise/police barriers for which there is no record or explanation by the respondent-company, and (ii) in the records of the barriers, all these trucks are shown to be carrying LPG cylinders, empty cylinders and/or scrap. The department has also proved that about 70 metric tonnes of LPG sheets used for the manufacture of cylinders were imported without payment of excise duty. All these facts indicate that illegal activities were going on in the premises of the respondent-company.
>
> Keeping in view the aforesaid discussion, we are of the view that the Tribunal should re-examine the case by drawing adverse inference against the assessee.
>
> We, therefore, answer the question in favour of the department, set aside the order of the Tribunal and remand the case to the Tribunal to decide it afresh in light of the above observations."

3. In view of the above findings of the Hon'ble High Court, both sides plead before us that the matter may be formally decided upholding the impugned adjudication order rejecting the appeal of the appellant.

4. As such, keeping in view the decision of the Hon'ble High Court of Himachal Pradesh as cited above, we uphold the impugned Order dated 8.3.95 passed by the adjudicating authority and dismiss the appeal of the appellant.

Order dictated & pronounced in open court on 25.08.2009.

(Dr. Chittaranjan Satapathy)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.