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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/129 /2006 - EX[DB]

Date 01/10/2009

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA — Appellant
Vs
SHREYANS INDUSTRIES LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 749/2009 EX[DB]** dated 29-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   SHREYANS INDUSTRIES LTD.
   VILL. MALIKPUR, AHMEDGARH, DISTT. SANGRUR (PUNJAB)
2. Adv. / Consult MS. A. NAYAK, ADV.,
   A-5, BASEMANT,
   LAJPAT NAGAR-III,
   N. DELHI-24
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.129/06-Ex(Br)

(Arising out of order in appeal No.20/CE/JC/Ldh/2005 dated 15.7.05 passed by the Commissioner of Central Excise(Appeals), Ludhiana)

CCE Ludhiana — Appellant

Vs

M/s Shreyans Industries Ltd — Respondent

Appeared for the Appellant : Shri S.K. Meena, SDR
Appeared for the Respondent : Ms. Asmita Nayak, Advocate

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 2.9.09

Final Order No. 749/09-Ex ~~/2009~~

Per D.N. Panda:

Revenue has come in appeal with the grievance that excise duty has been collected by the respondents from the Government purchasing department while enjoying the duty exemption in terms of Notification No.6/2002-CE dated 1.3.2002.

2. Learned DR Shri Meena points out that the respondent has collected excise duty including the same in the value of the goods and has not deposited that for which Section 11AC is invoked.

3. Learned Counsel Ms. Asmita Nayak for respondent submits that duty, if any, that was to be payable, in respect of the sale was condition of the purchase order. When no excise duty was payable by Government department, in view of the exemption enjoyed by

respondents, no excise duty was collected. There is no evidence on record to show that any of the invoices exhibited excise duty separately and that is not paid to the treasury. In absence of such evidence, the proceeding is mis-conceived.

4. Heard both sides and perused the record.

5. We have gone through paragraph 4 of the show cause notice which has brought out the terms of purchase agreed by the Government Department. It was understanding between the parties that excise duty, if any, shall be forming part of the purchase price. We have also gone through paragraph 4 of the order in original placed by the learned DR. That para says that respondent had struck off the words excise duty in the invoice which proves that the appellant had collected cum-duty price. But We have not noticed anything on facts which is contrary to the requirement of notification in question in the present appeal. In absence of any cogent evidence, Revenue has no clear case of application of Section 11D of Central Excise Act, 1944. Revenue's appeal therefore calls for dismissal. We order accordingly.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*