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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

Date 09/09/2009

Appeal No. E/504 /2006 - EX[DB]

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH

Appellant
Vs
Respondent

RARM FRESH FOODS (P) LTD.

I am directed to transmit herewith a certified copy of **Final order No.** 846/2009 **EX[DB]** dated 02-9-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
FARM FRESH FOODS (P) LTD.
BATA MANDI, YAMUNA NAGAR ROAD, PAONTA SAHIB, DISTT. SIRMOUR(HP)
2. Adv. / Consult

NONE

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)
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Assistant Registrar
(Excise Appeal Branch)

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. II

DATE OF HEARING : 26/8/09.

Excise Appeal No. 504 of 2006

[Arising out of the Order-in-Appeal No. 433/CE/CHD/2005 dated 14/12/2005 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

CCE, Chandigarh — Appellant

Versus

M/s Farm Fresh Foods (P) Ltd. — Respondent

Appearance

Shri Fateh Singh, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Order No. 646/09-EX Dated : ____________

ORDER

Per. D.N. Panda :-

Respondent is absent today. We have gone through the order passed by the learned Commissioner (Appeals) appearing at page 18 to 21 of the appeal folder. Learned Commissioner found that on 24/3/03 when the respondent has crossed the limit of rupees one crore, there was a liability to excise duty. But that duty was discharged from PLA account as well as Cenvat account. Revenue's grievance is that duty should have been discharged from PLA without being discharged from Cenvat account.

2. Also we have noticed that the learned Commissioner has absolved the respondent from penal consequence of law following decisions in the case of **Rashtriya Ispat Nigam Ltd. vs. CCE 2003 (161) E.L.T. 285 (Tri)** and in the case of **CCE vs. Machino Montell (P) Ltd., 2004 (62) R.L.T. – 709.** Therefore revenue's prayer is to restore the order-in-original setting aside the order-in-appeal.

3. There is no doubt that levyability of penalty is now to be tested according to the ratio laid down by the Apex Court in the case of **UOI vs. Rajasthan Spinning & Weaving Mills** reported in **2009 (238) E.L.T. 3 (S.C.)**. Therefore to examine the issue of levy of penalty again on the basis of law laid down by the Apex Court, this matter calls for remand for which we direct so. Since, we have remanded the matter, it is also open for revenue to examine the manner of discharge of duty liability after 24/3/03. Learned Adjudicating Authority in the course of remand shall examine both aspects i.e., liability of penalty in the light of the Apex Court decision in the case of Rajasthan Spinning & Weaving Mills (supra) and manner discharge of duty liability in accordance with law. With these directions, we remand the matter to the learned Adjudicating Authority to reexamine the issues afresh.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK