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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C 115 -120 /2008 Date 13/06/2008

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE. CENTRAL REVENUE BUILDING,
THE MALL. AMRITSAR 143001.
C.C. (PREVENTIVE) AMRITSAR — Appellant

Vs

SHRI RAM AGRO CHEMICAL PVT. LTD. — Respondent

I am directed to transmit herewith a certified copy of Final order No.C/125-130/08 Customs dated 6.6.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   SHRI RAM AGRO CHEMICAL PVT. LTD.
   SIMBAL ROAD.
   TOHANA.
   DISTT. FATEHBAD (HARYANA)
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10. SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R.
4. J.C.D.R.
5. Bar association. CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46. Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases. B-37, Sector -I, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT, U.P.
10. Nidheshak publications, I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road. T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Office Copy
15. Guard file
16. M/s Prabhat Fertilisers & Chemical Works
    Vill: Manglapur,
    Kunjpura Rd.,
    Karnal (Haryana)

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL NO. 115 TO 120 OF 2008

[Arising out of Order-in-Appeal No. 133-136/Cus/Appl/Ldh/2007 dated 30.10.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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?	No
2.	Whether it would 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?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

C.C., Amritsar — Appellant

Vs.

M/s. Prabhat Fertilisers & Chemical Works,
M/s. Ram Agro Chemicals Pvt. Ltd., — Respondents

Appearance:

Shri R.C. Sankhla, SDR, Departmental Representative, for the Revenue,
Shri R.K. Hasinga & Shri S. Jagmohan Bansal, Advocates for the respondents.

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 6th June, 2008

FINAL ORDER NO. C/125-130/08 **dated** 6/6/08

Per S.S. Kang:

Since common issue is involved in these appeals, they are being taken up together. Revenue filed these appeals against the impugned order whereby the Commissioner (Appeals) has held that CVD is not leviable on Zinc skimming.

2. We observe that this issue is already settled by the Tribunal in the case of C.C. Amritsar vs. M/s. Gupta Agro Industries, vide Final Order No. C/31/08 dated 20.3.2008. The Tribunal has held as under:-

"2. This appeal by the Revenue is directed against the order of Commissioner (Appeals) dated 03.10.2007 allowing the appeal of the assessee/respondent. The dispute relates to levy of countervailing duty on Zinc Skimming. The learned Commissioner held that as the goods in question are not excisable, no countervailing duty could be imposed and accordingly set aside the order of the adjudicating authority. In coming to the said conclusion, he placed reliance on a decision of the Supreme Court in the case of CCE, Jaipur vs. J.K. Synthetics, 2000 (120) ELT 54 (SC). The learned D.R. tried to distinguish the said decision. He contended that the decision was rendered on the facts of the case and has no bearing on the present dispute. We are unable to agree with the submission. The decision lays down a principle of law that where excise duty cannot be levied on any goods, no countervailing duty/additional duty can be levied. This, if we may say so with respect, is plain common sense. We, therefore, do not think that the Commissioner committed any error in upholding the claim of th3e assessee.

3. We find no merit in this appeal and accordingly dismiss the same."

In view of the above decision we find no merit in the present appeals. The same are dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 9th June, 2008-06-09
RK