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

Appeal No. E/625 /2006-SM[BR]

Date 14/01/2008

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

To :  
CCE,MEERUT-II  
OPP SHAHEED SMARAK,DELHI ROAD,MEERUT

CCE,MEERUT-II

M/S BISALPUR KISAN SAHKARI CININ MILLS LTD.

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 69/2008-SM[BR] dated 6.12.2007  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/S BISALPUR KISAN SAHKARI CININ MILLS LTD.  
BISALPUR DISTT.PILIBHIT[U.P]

2. Adv. / Consult SHRI. KAPIL VAISH C.A.

B-51, BUTLER PLAZA CIVIL LINES, BAREILLY

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg, 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

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

E/Appeal No.625 /2006-SM

(Arising out of order in appeal No.264/CE/MRT/II/05 dated 24.11.2005  
passed by the Commissioner (Appeals), Customs & Central Excise, Meerut)

For approval and signature:

Hon'ble Mr.S.S. Kang, Vice President)

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1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

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CCE, Meerut-II

Appellant  
(Rep. by Ms. Archana P. Tiwari, Jt CDR)

Vs

M/s Bisalpur Kisan Sahakari Chinni Mills

Respondent  
(Rep. by Shri Kapil Vaish, C.A)

Coram: Hon'ble Mr S.S. Kang, Vice President

Date of Hearing: 6.12.2007

Per S.S. Kang: *FINAL* Order No. 69/08 - SM (BR)

Heard both sides. The revenue filed this appeal with the prayer for imposition of penalty under Rule 13(1) of Cenvat Credit Rules. In the impugned order, the Commissioner (Appeals) dismissed the appeal as not

maintainable on the ground that the appeal filed by the respondents is already decided by the Commissioner (Appeals). Hence the order in original merges with the order in appeal.

The contention of revenue is that as revenue is aggrieved against the adjudication order whereby sufficient penalty has not been imposed, therefore, that issue has to be decided by the Commissioner (Appeals) independently. The revenue relied upon the decision of Mauria Udyog Ltd Vs CCE Delhi-II reported in 2002 (146) ELT 37 (SC) to submit that when an appeal has been filed challenging the adjudication order which is against the aggrieved party, that appeal is to be decided on its merit.

I find that in view of the decision of the Hon'ble Supreme Court in the case of Mauria Udyog Ltd supra, the Commissioner (Appeals) has to decide the appeal filed by the revenue on its own merit. Hence the finding that order in original is merged with the order in appeal is liable to be set aside.

In the present appeal, the prayer of the revenue is to enhance the amount of penalty. I find that in the appeal filed by the respondent, the Tribunal vide order dated 20.2.2007 <sup>reported in</sup> in Bisalpur Kisan Sahkari Chini Mills Ltd Vs CCE Meerut-II reported in 2007 (213) ELT 629 had allowed the appeal and set aside the demand. In these circumstances, the issue for enhance of penalty does not survive. The appeal filed by the revenue is dismissed.

(Order dictated and pronounced in the open Court).

MPS\*

(S.Š. Kang)  
Vice President