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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/1303/2005-SM[BR] Date 28/01/2008

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)

C.C.E. MEERUT II — Appellant
Vs
M/S BAZPUR CO-OPERATIVE SUGAR FACTORY LTD — Respondent

I am directed to transmit herewith a certified copy of Final order No. 173/2008-SM[BR] dated 18.12.2007 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 BAZPUR CO-OPERATIVE SUGAR FACTORY LTD
   BAZPUR, DISTT.- UDHAM SINGH NAGAR, UTTRANCHAL
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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 Publictions (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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No.1303 of 2005-SM (BR)
[Arising out of order in appeal No.08-CE./MRT-II/2004 dated 2.2.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut]

Date of Hearing/ Decision:18.12.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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 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?	:	

CCE, Meerut-II ...Appellants
[Rep. by Mr.S.L. Meena, DR]

Vs.

M/s. Bazpur Co-operative Sugar Factory Ltd. Respondent
[Rep. by Mr. Atul Gupta, Authorized Representative (DR)]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 173/08-SM(BR)/Dated:18.12.2007.

Per P.K. Das:

Heard both sides and perused the records.

2. The Revenue filed this appeal against the order of the Commissioner (Appeals), where the appeal of the Revenue was dismissed as time barred. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:

> " In the present appeal the date of the Order-in-Original is 31.10.2002. However, the order under sub-section (2) of Section 35-E(3) of the Central Excise Act, 1944 by the Commissioner was passed on 7.11.2003 which is beyond the stipulated period of one year as prescribed under Section 35 E(3). The appeal, therefore, appear to be time barred.

3. Ld. Counsel on behalf of the respondent placed the copy of the order dated 7.11.2003 under Sub-section (2) of Section 35 B of the Central Excise Act, 1944. He also relied upon the decision of the Hon'ble Bombay High Court in the case of Bombay Chemicals Ltd. Vs. Union of India reported in 2006 (201) E.L.T. 167 (Bombay).

4. Ld. DR on behalf of the Revenue pointed out that the note sheet order was passed within the stipulated period.

5. After considering the relevant provisions and the case laws, I do not find any force in the submissions of the ld. DR. Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open Court on 20.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.