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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. G/2 /2008 –SM [BR]

Date 20/03/2008

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 SHRI BADRI KEDAR PAPERS [P] LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 447 /2008 –SM [BR] dated 7.3.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S SHRI BADRI KEDAR PAPERS [P] LTD
   NAGINA ROAD NAJIBABAD, DIST - BIJNORE, U.P.
2. Adv. / Consult SHRI. S.K. MATHUR CA.
   1, C-15, 16, HARTHALA INDUSTRIAL AREA
   KANTH ROAD, MORADABAD [U.P.] 244001
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 & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL No. 02 OF 2008-SM

[Arising out of Order-in-Appeal No. 12-CUS/MRT-II/2007 dated 16.10.2007 passed by the Commissioner (Appeals), Customs &Central Excise, Meerut-II]

For approval and signature:

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

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 would 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?	

CC&CE, Meerut-II Appellant

Vs.

M/s. Shri Badri Kedar Papers (P) Ltd., Respondents

Appearance:

Ms. Archana P. Tiwari, Jt.CDR for the Revenue,
Shri S.K. Mathur, Consultant for the respondents

Coram:

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

Date of Hearing: 7th March, 2008

FINAL ORDER NO. 447/08 SM(BR) dated 7/3/08

Per S.S. Kang:

Heard both sides.

2. Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) has dismissed the appeal filed by the Revenue as non-maintainable on the ground that in the appeal filed by the present respondent Commissioner (Appeals) has already passed the order. Therefore, Order-in-Original has merged with the said order-in-appeal and it cannot be opened at this stage.

3. I find that the adjudicating authority confiscated the imported goods and allowed to be released the same on payment of redemption fine and also imposed penalty. Importer as well as Revenue had filed appeals before the Commissioner (Appeals). The Revenue filed appeal on the ground that the goods are prohibited, therefore, they are not allowed to be released on payment of redemption fine and is liable to be confiscated absolutely. The importer filed the appeal challenging the imposition of penalty. I find that this issue has already been settled by the Hon'ble Supreme Court in the case of Mauria Udyog Ltd. vs. CCE, Delhi-II, reported in 2002 (146) ELT 37. The Hon'ble Supreme Court held that if the appeals are filed challenging the impugned order on a different ground then the appeals are to be decided on merit.

Concept of merger of appeal filed by the other party has already been decided by the Hon'ble Supreme Court. In view of the decision of the Supreme Court in the case of Mauria Udyog Ltd. (supra), impugned order is set aside and the matter is remanded to be Commissioner (Appeals) to decide afresh on merit. after affording reasonable opportunity of personal hearing to the respondents. Appeal is disposed of by way remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 7th March, 2008

RK