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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/2435/2006 - SM

Date 29/09/2008

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA — Appellant

Vs

M/S HERO CYCLES — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1327 / 2008 **SM[BR]** dated **28.8.2008**

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 HERO CYCLES
HERO NAGAR G.T.ROAD,LDHIANA
2. Adv. / Consult
NONE

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 - 3
8 Excise & Customs cases, B-37, Sector -1, 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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

N THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2435 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.294/CE/Chd/2006 dated 18.04.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:28.08.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : Yes

CCE, Ludhiana ...Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Hero Cycles (CR Division) ....Appellants
[Rep. by None.]

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

Final Order No.1327/08-SM(BR)/Dated:28.08.2008

Per P.K. Das:

Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondent.

2. The Adjudicating Authority confirmed the demand of duty of Rs.86,360/- and appropriated the said amount as already debited by them and also imposed penalty of equal amount under Rule 173Q of the erstwhile Central Excise Rules read with Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) reduced the penalty to Rs.15,000/-. Hence, the Revenue filed the appeal before this Tribunal for imposition of penalty of equal amount of duty.

3. After hearing the DR and on perusal of the records, It has been alleged that the Respondent availed Modvat Credit in respect of the amounts, which are not permissible for availment of credit on the ground that the said amount cannot be treated as duty amount. On perusal of the records, I do not find that there was any fraud, mis-statement or suppression of facts with intent to evade payment of duty. So, Section 11 AC of the Act cannot be warranted in this situation. In view of that, I do not find any merit in the appeal of the Revenue. Accordingly, the Appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 28.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.