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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/1763/2006-1764/2006 – SM[BR] Date 29/09/2008

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

To :
CCE,GHAZIABAD

KAMLA NEHRU NAGAR GHAZIABAD

CCE,GHAZIABAD Appellant

Vs

M/S BABA VISHWAKARMA ENGG CO P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1337- 1338 / 2008- **SM[BR]** dated 10.9.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

(1-2) M/S BABA VISHWAKARMA ENGG CO P LTD.
C-201,S.B.ROAD GHAZIABAD

2. Adv. / Consult SHRI RAJESH CHIBBER ADV
FA-2 KAVI NAGAR GHAZIABAD [U.P]

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1763-1764 of 2006-SM(BR)

[Arising out of Order-in-Appeal No. 18-19/CE/GZB/2006 dated 27.2.2006 passed by Commissioner (Appeals) Customs & Central Excise, Ghaziabad.]

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?	:	
2. Whether it should 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?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

Commissioner of Central Excise Ghaziabad — Appellant

Vs.

M/s. Baba Vishwakarma Engg. Co.P. Ltd. — Respondent

Appearance: Mr. Sansar Chand, DR for the Appellant
Mr. Rajesh Chibber, Advocate for the Respondent

Date of decision : 10.9.2008

Final **ORDER NO. 1337-1338/08-SM(BR)**

Per P.K.Das (for the Bench):

The Revenue filed this appeal against the order of the Commissioner (Appeals) whereby adjudication order was set aside.

2. After hearing both sides and on perusal of records, it is seen that adjudication authority has imposed a penalty on failure to discharge duties on two occasions under Rule 8 of Central Excise Rules, 2002. The penalty was imposed under Rule 25(1) of Central Excise Rules, 2002 for the default in payment by them. Commissioner (Appeals) set aside the penalty as there appears no intention of respondents to evade payment of duty. The Tribunal in the case of Condor Power Products P. Ltd. vs. CCE, Faridabad [2007 (210) ELT 137 (Tri-Del) held that penalty is not imposable under Rule 25 of Rules for delay in payment of duty under Rule 8 of the Rules. It has been observed that the assessee disclosed the transactions by filing returns and liability to pay duty will never be in dispute. There is no intention to evade payment of duty and any inference of evasion of duty cannot be drawn from mere delay in making the payment of tax in respect of transactions already disclosed by filing returns in time.

2. Respectfully following the decision of the Tribunal in the case of Condor Power Products P. Ltd. (supra), I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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