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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/55 /2007 – SM[BR] Date 17/11/2008

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

To :
C.C.E. JAIPUR II
NEW CENTRAL REVENUE BUILDING, STATUE
CIRCLR, C - SCHEME, JAIPUR
302005

C.C.E. JAIPUR II Appellant
Vs
M/S EVERSHINE MARBLES & EXPORTERS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1468 / 2008- **SM[BR]** dated 20.10.2008

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 EVERSHINE MARBLES & EXPORTERS (P) LTD.
   MAKRANA ROAD, MADANGANJ, KISHANGARH (RAJASTHAN)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI-110070

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 NEW DELHI

Appeal No.E/55 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.613(HKS)CE/JPR-II/2006 dated 10.11.2006 of the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:20.10.08

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? : 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.

CCE, Jaipur ...Appellants

[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Evershine Marble & Exporter (P) Ltd. ....Respondent

[Rep. by Shri Atul Gupta, Advocate]

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

Final Order No..1468/08-SM(BR)....../Dated:20.10.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of Marble Slabs & Tiles classifiable under Sub-heading No.2504.21 and 2504.31 of the Schedule to the Central Excise Tariff Act, 1985. On scrutiny of the records, it was found that the

Respondent cleared old blades vide their commercial Bill No.429 dated 20.01.2001 and Bill No.154 dated 5.11.1999. It has been pointed out that the Respondent availed the credit on blades as capital goods and, therefore, they are liable to reverse the credit while clearing the old blades. The Respondent immediately debited the duty amount of Rs.12,000/- vide PLA Entry No.31 and 32, both dated 24.10.2001. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by them and also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 along with interest. The Commissioner (Appeals) set aside the penalty. Hence, the Revenue filed this appeal.

2. After hearing both the sides and on perusal of the records, it is seen that there is no material available for clandestine removal of the goods. There was confusion on payment of duty on the clearance of old and used capital goods. The goods were cleared under the cover of commercial bills. In view of that, I find that penalty under Section 11AC of the Act is not warranted. Therefore, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 20.10.08

(P.K. Das)
Member (Judicial)

Ckp.