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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/1684/2006-SM[BR] Date 23/05/2008

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

To :
CCE,ALLAHABAD
38,M.G.MARG,CIVIL LINES ALLAHABAD(UP)

CCE,ALLAHABAD Appellant
Vs
M/S AZAM RUBBER PRODUCTS LTD, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 810 /2008 –SM[BR] dated 14.5.2008 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 AZAM RUBBER PRODUCTS LTD,
   AL-9,SECTOR-13,GIDA,GORAKHPUR,(UP_
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, 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, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. I

**Excise Appeal No. 1684 of 2006-SM**

(Arising out of Order-in-Appeal No. 16-CE/ALLD/2006 dated 23.2.2006 passed by the Commissioner (Appeals), Central Excise, Allahabad)

For approval and signature

HON'BLE JUSTICE S.N. JHA, PRESIDENT

| | | |
|---|---|---|
| **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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| **3.** | Whether their Lordships wish to see the fair copy of the order? | Seen |
| **4.** | Whether order is to be circulated to the Departmental authorities. | No |

CCE, Allahabad — Appellant

Vs.

M/s Azam Rubber Products Ltd. — Respondent

Appearance:
Shri B.S. Suhag, DR - For appellant
None - For respondent

CORAM:
HON'BLE JUSTICE S.N. JHA, PRESIDENT

Date of Hearing: 14.5.2008

Final Order No. 810/08-SM(BR) dated 14.5.08

Per Justice S.N. Jha :

This appeal filed by the Revenue is directed against the order in appeal of the Commissioner (Appeals) dated 23.2.2006 dismissing the appeal of the Revenue. The Revenue had preferred appeal challenging the order of the

Assistant Commissioner Imposing penalty of Rs.25,000/- on the respondent – assessee under Rule 25 of the Central Excise Rules, 2002. The case of the Revenue is that in the facts of the case, penalty should have been imposed under Section 11AC of the Central Excise Act equivalent to the excise duty. It may be mentioned here that duty involved is Rs.50,145/- on account of excess clearances and the duty demand stands confirmed not only by the Assistant Commissioner but also by the Commissioner (Appeals).

2. It so happened that the assessee – respondent challenged the imposition of penalty, besides the duty demand, before the Commissioner (Appeals) earlier in point of time. While upholding the demand of duty, the Commissioner (Appeals) reduced the penalty from Rs. 25,000/- to Rs. 15,000/- vide order dated 21.4.2005. When the appeal preferred by the Revenue came up for consideration, the Commissioner (Appeals) observed that as the issue involved in the appeal had already been decided, he could not consider the matter afresh as the Commissioner (Appeals) is not empowered to recall and

review his own order. He also observed that imposition of penalty is a matter of discretion as held by the Supreme Court in the case of **Zunjarrao Bhikaji Nagankar Vs. UOI** – 1999 (112) ELT 772 (SC).

3. I am in agreement with the Commissioner (Appeals). The order dated 21.4.2005 having not been challenged by the Revenue, and allowed to attain finality, it is clear that a different order could not be passed on the appeal of the Revenue. A different order would tantamount to revising the earlier order which is not permissible in law. That being the position, I find no merit in this appeal which is accordingly, dismissed.

(Dictated & pronounced in open Court)

(JUSTICE S.N. JHA)
PRESIDENT

RM