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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

Date 28/07/2008

Appeal No. E/3725/2006-3726/2006-SM[BR]

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH — Appellant

Vs

M/S VARDHMAN INDUSTRIES LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1081 -1082 /2008 –SM[BR] Dated 4.7.2008

assed 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 VARDHMAN INDUSTRIES LTD
VILLAGE-BEOPROR, SHAMBHU, RAJPURA, DISTRICT-PATIALA(PB)
2. Adv. / Consult SHRI K.K. SHARMA ADV.
N /V ;------------------------------

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 04.7.2008

Central Excise Appeal No. 3725-3726/2006-SM(BR)

[Arising out of the order-in-Appeal No. 706-707/CE/CHD/2006 dated 11.8.2006 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

For Approval and Signature:

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

1	Whether Press Reporter 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 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?	

C.C.E. Chandigarh — Appellants/Applicant
vs.
M/s Vardhman Industries Limited — Respondent

Appearance:

Shri S. Gautam, DR for the Appellant
Shri K.K. Sharma, Advocate for the Respondent

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

Final Order No. 1081 – 1082/08-SM(BR)

Per: P.K. Das:

After hearing both the sides and on perusal of records, it is seen that the Adjudicating Authority rejected the refund claim of Rs. 2,26,369.00 because the respondent had given discounts by way of issue of credit notes and failed to prove that the incidence of duty has not been passed to any other persons. Commissioner (Appeals) set-aside the Adjudicating order and sanctioned the refund claim. Revenue filed this appeal against the Order of Commissioner (Appeals).

2. It is seen that Commissioner (Appeals) allowed the refund claim following his earlier Order (Appeal) No. 430 CE/CHD/03 dated 30/5/2003. Revenue filed appeal, which was dismissed by the Tribunal by Final Order Dated 10.10.2003. Revenue again filed appeal before the Hon'ble Punjab & Haryana High Court which was also dismissed as reported in 2006 (202) ELT 765 P&H).

3. The refund claims in the respondent own case on similar issue for different period, the appeal of Revenue was rejected by the Hon'ble High Court. The question before the Hon'ble High Court was as to whether duty paid at the time of clearance of goods and collected from customers can be refunded if post ~~passed~~ clearance transaction is made through credit notes. It is further seen that another appeal of Revenue was rejected by he Hon'ble High Court by order and judgment dated 22.1.2007.

4. In view of the above decision of the Hon'ble Punjab & Haryana High Court, both the appeals filed by the Revenue are rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta