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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/2545/2006-2546/2006-SM[BR] Date 14/08/2008

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

To :
1. M/S SCHENCK AVERY LTD
2. SHRI ASHOK MITTAL
PLOT NO. A-5 SECTOR 81, PHASE II NOIDA

M/S SCHENCK AVERY LTD — Appellant

Vs

C.C.E NOIDA — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1134 -1135 / 2008-SM[BR] dated 25.7.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E NOIDA
   B-123, SECTOR-5, NOIDA
2. Adv. / Consult
   MR. Y KUMAR
   H. NO.20, SECTOR-46 FARIDABAD-121003
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 2545-2546 of 2006

(Arising out of Order-in-Appeal No. 81-82/CE/APPL/NOIDA/06 dated 25.04.2006 passed by the Commissioner of Central Excise (Appeals), Noida).

DATE OF HEARING : 25.07.2008
DATE OF DECISION : 25.07.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM , VICE-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 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 ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	yes

M/s Schenek Avery Ltd. .... **Appellants**
Shri Ashok Mittal ..... (Rep. by Sh. V.S. Kumar, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep by Sh. Sumit Kumar, DR)

CORAM : HON'BLE MS JYOTI BALASUNDARAM,VICE-PRESIDENT

Final ORDER NO. 1134-1135/2008-SM(BR)

PER JYOTI BALASUNDARAM :

The case of the Department against the appellants herein is that, they intended to clandestinely remove the Horizontal Hard Bearing Balancing Machine – Model HS 20 BU with Cab 610 Measuring instruments with Accessories and Rotor, found in their factory on the visit of the Officers on 09.01.2004. The explanation of the appellants that this machine had been manufactured for M/s Royal Filament, Surat, cleared under invoice dated 31.12.2003, but returned by the transporter, M/s Shree Balaji Transport Corpn., due to some dispute regarding payment, has been rejected by the authorities below.

2. I have heard both sides on the appeals against the confiscation of the machine and penalty of Rs. 75,000/- imposed upon the appellant Company as well as penalty of Rs. 15,000/- imposed upon its DGM (Finance & Accounts), Shri Ashok Mittal. I find that in his statement dated 10.01.2004, he has stated that the machine was supplied to M/s Royal Filament, Surat, but received back from the transporter on 09.01.2004 due to some dispute over the payment. The appellants had also filed copies of the letters dated 05.01.2004 and 10.01.2004 written by Shree Balaji Transport Corpn. due to non-receipt of the payment. The Department has not conducted any investigation either with the transporter or with M/s Royal Filament, Surat, in order to determine, whether the

explanation given by the appellant is plausible and acceptable. Interest of justice requires that the case be decided afresh by the adjudicating authority. I, therefore, set aside the impugned order and remit the case to the adjudicating authority for considering the documents filed by the appellants in support of their contention and for passing fresh orders, after extending reasonable opportunity of hearing to ~~both sides~~ them.

3. The appeals are thus allowed by way of remand.

(Dictated and pronounced in the open Court on the day of 25th July, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay