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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/3921/2006-3922/2006-SM[BR] Date 22/08/2008

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

To :
C.C.E.KANPUR

117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant

Vs

M/S BAJWA RUBBER INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1161 – 1162 / 2008 –SM[BR] dated 15.7.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S BAJWA RUBBER INDUSTRIES
2. SHRI SURSH BAJWA, PARTNER
SHAHGANJ, AGRA

2. Adv. / Consult SHRI BIPIN GARG ADV.
B- 1 / 1289 –A, VASANT KUNJ NEW DELHI -70

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3921-3922 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.503-504-CE/APPL/KNP/2006 dated 13.10.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:15.07.2008

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

N

CCE, Kanpur ...Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

(1) M/s. Bajwa Rubber Industries
(2) Shri Suresh Bajwa, Partner ...Respondents
[Rep. by Shri A. Gupta, Advocate]

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

Final Order No. 1161-1162/2008-SM(BR) Dated:15.07.2008

Per P.K. Das:

Both the appeals are arising out of a common order, therefore, both are being taken up together for disposal.

2. Revenue filed these appeals against the order of the Commissioner (Appeals), whereby penalties imposed under Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002 separately on Respondent No.1 and penalty imposed under Rule 26 of the said Rules on the Partner, Respondent No.2 were set aside.

3. After hearing both the sides and on perusal of the records, it is seen from the impugned order that the Commissioner (Appeals) set aside the penalties because the Respondent deposited the duty before issue of the show cause notice and followed the Larger Bench decision of the Tribunal in the case of Machino Montell (I) Ltd. – 2004 (168) ELT 466 (T-M), which has been over-ruled by the Hon'ble Punjab & Haryana High Court.

4. Ld. DR submits that the Commissioner (Appeals) did not consider the facts of the case and set aside the penalties following the Larger Bench decision.

5. On the other hand, ld. Advocate on behalf of the Respondent drew the attention of the Bench to the Adjudication Order. It appears that the Respondent had been availing exemption Notification No.8/2003-CE dated 1.3.2003. It is contended by the ld. Counsel that the Respondent was not aware of the amendment of the SSI Exemption Notification in as much as the aggregate value of clearances of all excisable goods (dutiable goods as well as nil rate of duty) would be taken into account for the calculation of Rs.3 Crores in the preceding financial year. So, the Respondent failed to take the registration and to pay ~~the~~ duty during the

financial year 2004-2005. He submits that the transaction was detected from the scrutiny of the Balance Sheet and, therefore, there is no suppression of facts with intent to evade payment of duty.

6. I find that the Commissioner (Appeals) had not gone into the facts of the case and set aside the penalty on the basis of the Larger Bench decision of the Tribunal as state above, which has been over-ruled by the Hon'ble Punjab & Haryana High Court. So, the facts of the case are required to be examined by the Commissioner (Appeals) before setting aside the penalties. Accordingly, the impugned orders are set aside and both the appeals are remanded to the Commissioner (Appeals) to consider the facts of the case and to pass an appropriate order after affording an opportunity of hearing to the Respondents. Both the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 15.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.