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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/3832/2006-SM[BR] Date 25/08/2008

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

To :
M/S PASUPATI ACRYLON LTD.
KASHIPUR ROAD, THAKURDWARA,
DISTT. MORADABAD.

M/S PASUPATI ACRYLON LTD. Appellant

Vs

C.C.E. MEERUT-II Respondent

I am directed to transmit herewith a certified copy of **Final order No 1174 / 2008-SM[BR]**. dated 18.7.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

3-9-08
ISSUED ON

Copy to :
1. Respondent
   C.C.E. MEERUT-II
   SHAHID PARK, NEAR ASHOK KI LAT, DELHI ROAD, MEERUT.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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

En/Appeal No.3832 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.156/CE/MRT-II/2006 dated 31.08.2006 passed by the Commissioner of Central Excise (Appeals), Meerut-II]

Date of Hearing/ Decision:18.07.2008

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? :

M/s. Pasupati Acrylon Ltd. ...Appellants
[Rep. by Shri R. Chhibber, Advocate]

Vs.

CCE, Meerut-II ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No. 1174/2008-SM(BR) Dated:18.07.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants filed a rebate claim of Rs.60,02,231/- on CIF value of goods. Subsequently, they revised the claim and restricted to Rs.59,48,580/- on FOB value. The Asstt. Commissioner of Central Excise sanctioned the rebate claim. The Appellant filed a refund claim of Rs.53,651/- on 29th September, 2005 for the differential amount involved between the CIF value and FOB value. The Adjudicating Authority rejected the refund claim because the Appellant had not challenged the rebate order, which has been upheld by the Commissioner (Appeals)

2. After hearing both the sides and on perusal of the records, it is seen that the Appellant restricted their rebate claim to Rs.59,49,580/- on FOB value, which was sanctioned by the Asstt. Commissioner of Central Excise. So, there is no reason for challenging the rebate order.

3. Ld. DR submits that the claim relates to rebate of duty and, therefore, this Tribunal has no jurisdiction in view of the provisions of clause 1 (b) of first proviso to Section 35 B(1) of the Central Excise Act, 1944. It is seen that the Appellant has not claimed this amount as rebate of duty. If the Appellant is treating it as rebate of duty, the same should be included in their rebate claim application. So, it is refund of duty and not rebate claim and, therefore, the submission of the ld. DR has no merit.

4. In any event, I find that the Appellant has not claimed the rebate of duty of Rs.53,651/- and there is no scope for challenging the rebate order. The findings of both the authorities below are not sustainable. Accordingly, the impugned orders are set aside and the matter is

remanded back to the Adjudicating Authority to consider the refund claim of Rs.53,651/- , in accordance with law.

Order dictated & pronounced in open court on 18.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.