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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/10 /2007-SM[BR] Date 29/08/2008

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

To :
C.C.E.BHOPAL
48, ADMINISTRATIVE AREA, AREA HILLS,
HOSHANGABAD ROAD, BHOPAL.
C.C.E.BHOPAL Appellant
Vs
M/S DIAMOND II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1222/ 2008 –SM[BR] dated 5.8.2008 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 DIAMOND II
   IMLAI DISTT- DAMOH(MP)
2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
   B-6 /10, SAFDERJUNG ENCLAVE NEW DELHI -29
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.10 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.204-CE/BPL/2006 dated 29.09.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:05.08.2008

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? :

CCE, Bhopal ...Appellants
(Rep. by Shri Sansar Chand, DR)

Vs.

M/s. Diamond-II ...Respondent
[Rep. by Shri Ravi Raghavan, Advocate]

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

Final Order No..1222/08-SM(BR)......./Dated:05.08.2008

Per P.K. Das:

Revenue filed this appal against the order of the Commissioenr (Appeals) whereby Adjudication Order was set aside.

2. The relevant facts of the case, in brief, are that the Respondent cleared the inputs namely Clinker as such and paid the duty following the procedure under Rule 8 of the Central Excise Rules, 2002. It has been alleged that the Respondent should pay the duty at the time of removal of the inputs and, therefore, they are liable to pay the interest. The Adjudicating Authority confirmed the demand of interest to Rs.3,46,18/- under Section 11 AB of the Central Excise Act and imposed penalty of Rs.10,000/-. The Commissioner (Appeals) set aside the Adjudication Order.

3. After hearing both the sides and on perusal of the records, it is seen that the dispute is that the Respondent paid the duty on clearance of the inputs as such observing the procedure under Rule 8 of the Central Excise Rules.

4. It is contended by the ld. DR that the Respondent should have paid the duty at the time of removal of the inputs under Rule 3(4) of the Rules. It is seen that the Tribunal consistently viewed that Rule 8 of the Central Excise Rules, 2002 is applicable on the clearance of the inputs/capital goods as such.

5. Ld. Advocate relied upon the decisions of the Tribunal as under:-

(i) Birla Ericsson Optical Ltd. & Anr. Vs. CCE, Bhopal
2008 (85) RLT 280 (CESTAT-Delhi)

(ii) CCE, Chandigarh Vs. Kandhari Beverages Ltd.
Kandhari Beverages Ltd.
2008 (86) RLT 470 (CESTAT-Del.)

(ii) KLRF Textiles Vs. CCE, Tirunelveli
2005 (188) ELT 169 (Tribunal-Chennai)

6. I find that the present case is squarely covered by the decisions of the Tribunal. So, I do not find any infirmity in the order impugned. The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 5.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.