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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/2495/2006-SM[BR]

Date 03/09/2008

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW — Appellant

Vs

SRICE & COLD STORAGE — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1249 / 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
   SRICE & COLD STORAGE
   H-12 & 13 & J-152, SITE-B, INDL. AREA, MATHURA
2. Adv. / Consult
   NONE;----------

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,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 05.8.2008

E/Appeal No. 2495/2006-SM(BR)

(Arising out of Order –in-Appeal No. 40/CE/LKO/06 dated 24.4.2006 passed by the Commissioner (Customs) Central Excise & Service Tax (Appeals), Lucknow)

For approval and signature:

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

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1. Whether Press reporters 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 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? Yes

No

C.C.E., Lucknow — Appellant/Applicant
(Rep. by Shri S. Gautam, DR)

Vs.

Srice & Cold Storage — Respondent
(None)

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

Final Order No. 1249/08-SM(BR)

Per: P.K. Das

Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondent inspite of issue of Notice.

2. After hearing the ld. DR and on perusal of the records, it is seen that the Adjudicating Authority confirmed the demand of duty and appropriated the said amount as already deposited the Respondent before issue of show cause notice. He imposed penalty of equal amount under Section 11 AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules 2002, Commissioner (Appeals) set-aside the penalty as the Respondent deposited the duty before issue of show cause notice and relied upon the decision of the Tribunal in the case of Rashtriya Ispat Nigam Ltd. Vs. CCE Visakhapatnam reported in 2003 (161) ELT 285 (Tri.-Bang.). The Larger Bench of the Tribunal in the case of CCE Vs. Machino Montell Pvt. (I) Ltd. reported in 2004(168) ELT 466 (Tri.-LB) held that no penalty is imposable, r~~eported in held~~ t~~hat no penalty is impose~~d if the duty is deposited before issue of show cause notice. The decision of the Larger Bench of the Tribunal is set-aside by Hon'ble the Punjab & Harayana High Court. It has been held that while imposing penalty under Section 11 AC of the Act, it has to be examined whether this said section is applicable in the facts of the case. So, the impugned order is set-aside and the matter is remanded to the

Commissioner (Appeals) to decide afresh after considering the facts of the case. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta