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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/1676/2006-SM[BR] Date 03/09/2008

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

To :
CCE,RAIPUR

CE BHAWAN TIKRAPARA RAIPUR(CG)

CCE,RAIPUR Appellant

Vs

M/S SHIVNATH ORGANICS P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No 1260 / 2008 –SM[BR]**. dated 4.8.2008

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 SHIVNATH ORGANICS P LTD.

PLOT NO-3-4,MPAKVN GROWTH CENTRE,RASMADA,BORAI,
DISTT DURG (CG)

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)

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

Central Appeal No.1676 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.10/RPR-II/2006 dated 22.02.2006 passed by the Commissioner of Central Excise (Appeals), Tikrapara, Raipur]

Date of Hearing/ Decision:04.08.2008

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? : No
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

CCE, Raipur	...Appellants (Rep. by Shri S. Chand, DR)
Vs.	
M/s. Shivnath Organics Pvt. Ltd.	...Respondent [Rep. by None.]

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

Final Order No.1260/08-SM(BR)/Dated:04.08.2008

Per P.K. Das:

It appears from the record that the matter was fixed for hearing on 13th May, 2008. The Tribunal passed an Order dated 13.5.2008 as under:-

> " Notice is said to have been duly served on the assessee – respondents. None however appears for the respondents. I am of the view that another opportunity should be given so that respondents may contest this departmental appeal. Adjourned to 30th June, 2008. It is made clear that in case of non-appearance on the next date too, the appeal may be disposed of ex-parte. A copy of this order may be sent along with intimation of the date of hearing."

2. It is seen from the record that notice was issued to appear on 13.06.2008 but none appeared on behalf of the Respondent and it was adjourned to 4.8.2008.

3. Today when the matter was called, none appeared on behalf of the Respondent. It is seen that the Respondent received the hearing notices on 13.05.2008 and 13.06.2008 and none appeared on behalf of them. Hence, the appeal is taken up for hearing in their absence.

4. After hearing the ld. DR on behalf of the Revenue and on perusal of the records, it is seen that the Commissioner (Appeals) set aside the penalty under Section 11 AC and Rule 13 of Cenvat Credit Rules, 2002 on the ground that the Respondent deposited the duty before issue of show cause notice. It is settled by the decision of the Hon'ble High Court that imposition of penalty under the said provisions are to be decided after considering the facts and circumstances of the case. In the present case, the Commissioner (Appeals) passed the order without considering

the facts and circumstances of the case. Therefore, the order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide the matter after considering the facts and circumstances of the case in accordance with law. The appeal is allowed by way of remand.

(Order dictated & pronounced in open court on 4.8.2008.)

(P.K. Das)
Member (Judicial)

Ckp.