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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/3109/2005 – SM[BR] E/ MISC / 193 / 2008 Date 27/11/2008

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

To :
M/S AAR KAY PROCESSORS
569-A, IST FLOOR, BASANT AVENUE, AMRITSAR,
PUNJAB

M/S AAR KAY PROCESSORS — Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1529 / 2008- **SM[BR] M/ 321/ 2008** dated 7.10.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.
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 - 3
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
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.3109/2005-SM, E/M 193/08-SM

(Arising out of order in original No.100 to 102/CE/Jal/2005 dated 30.5.2005 passed by the Commissioner of Central Excise, Chandigarh).

For approval and signature:

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

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?

No

Yes.

M/s Aar Kay Processors — Appellant (Rep. by Mr. R. Santhanam, Advocate)

Vs

CCE, Jalandhar — Respondent (Rep. by Shri Sansar Chand, DR)

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

Date of Hearing: 7.10.08

Misc order No. 321/08-SM(BR)
final Order No. 1529/2008-SM(BR)

Per P.K. Das:

The appellants filed this appeal against the demand of duty of Rs.40,000/- and penalty of equal amount alongwith interest for the period 16.12.1998 to 31.12.1998. The Commissioner of Central Excise held that w.e.f. 1.1.1999, the appellants were not covered under the definition of Independent processors, hence they are not liable to pay duty under the Compounded Levy Scheme.

2. The learned Counsel contented demand on preliminary objection as well as on merit. The main contention of the learned Counsel is that the duty was demanded on the basis of determination of annual capacity under the Hot Air Stenter Independent Processors Annual Capacity Determination Rules 1998 issued under erstwhile Section 3 A of Central Excise Act, 1944. The Hon'ble Madras High Court in the case of Beauty Dyers Vs Union of India reported in 2004 (166) ELT 27 (Mad.) held that Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 prior to Notification No. 42/98, are ultra vires of erstwhile Section 3-A of Central Excise Act, 1944. The Tribunal in the case of Raji Thangam Textiles Ltd Vs CCE, Coimbatore reported in 2006 (205) ELT 631 (Tri.-Chen.) set aside the order following the decision of the Hon'ble Madras High Court.

3. The learned DR relied upon the decision of the Hon'ble Supreme Court in the case of CCE Gujarat Vs Roop Textiles Mills Ltd reported in 2007 (213) ELT 486 (SC) wherein the decision of the Hon'ble Gujarat High Court on the identical issue was set side and matter remanded back to the Hon'ble High Court for decision. He also submits that the appellant had not taken this issue before the lower authorities.

4. I find that in the case of CCE Gujarat Vs Roop Textiles Mills Ltd (supra), the Hon'ble Gujarat High Court dismissed the appeal filed by the Revenue without answering the question and merely stated that no question

of law arose for determination in the Department's appeal. The Hon'ble Supreme Court taking into consideration of the decision of the Madras High Court in the case of Beauty Dyers (supra) held that there is a question of law involved in the appeal and therefore, set aside the decision of the Hon'ble Gujarat High Court and remanded the matter back for its decision. It is seen that the Hon'ble Supreme Court had not given any observation in the case. The submission o the learned DR that this issue was not taken before the lower authorities is not sustainable as the issue is related to question of law and can be taken before the Appellate authority. Respectfully following the decision of the Hon'ble Madras High Court in the case of Beauty Dyers (supra), the impugned order is set aside and the appeal is allowed with consequential relief. It is made clear that this order is passed without going into the merits of the case.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*