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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/1834 – 1836 / 2006 –SM[BR] Date 06/01/2009

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

To :
M/S SOORANJMULI BAIJNATH INDS (P) LTD
FLAT NO. 1,1ST FLOOR, MCD BUILDING SHAKTI NAGAR CHOWK, G.T.ROAD, DELHI 110007

[2]M/S JAYANTI INTERNATIONAL
E-4-A, INDUSTRIAL AREA, SONEPAT-151001
[3] MR. JAI PRAKASH GUPTA PARTNER
M/S JAYANTI INTERNATIAL
E-4-A, INDUSTRIAL AREA SONEPAT-131001

M/S SOORANJMULI BAIJNATH INDS (P) LTD Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE GURGAON Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1671 -1673 / 2008 - **SM[BR]** dated 30.12.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE GURGAON
   DELHI-III, VANIJYA NIKUNJ, UDYOG VIHAR, PHASE-V, GURGAON
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal Nos. 1834 - 36 of 2007-SM
[Arising out of Order-in-Appeal No. 437-444/CE/Appl/Ldh/2005 dated 28.12.2005 passed by the Commissioner (Appeals) Central Excise, Ludhiana]

Date of Hearing/Decision : 26.12.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Soorajmull Baijnath Inds. (P Ltd., — Appellant
M/s Jayanti International
Jai Prakash Gupta

Vs.

CCE, Gurgaon — Respondent

Appearance:
Mr. Atul Gupta, Advocate for the appellant
Mr. R.K. Saini, DR for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1671-1673/08-SM(BR)

Per Jyoti Balasundaram:

By the impugned order the Commissioner of Central Excise (Appeals) has upheld the duty demand of Rs. 72,543/- and imposed penalty of Rs.20,000/- on M/s Soorajmull Baijnath Inds. (P) Ltd., confirmed penalty of Rs. 72,543/- on M/s Jayanti International and penalty of Rs. 10,000/- on Sh. Jai Prakash Gupta, Partner of M/s Jayanti International under Rule 26 of the Central Excise Rules, 2002.

2. I have heard both sides. The case of the Department is wrongful availment of modvat /cenvat credit by M/s Soorajmull Baijnath Inds. (P) Ltd., on the strength of invoices without actual receipt of any goods in their factory for utilization of final products of excisable goods.

3. I find that in the case of Aarti Steels Ltd., & Ors. vs. CCE, Ludhiana & Ors. reported in 2008 (89) RLT 235 (CESTAT-Del.), the Tribunal held that once the Revenue has discharged the initial burden by showing that the vehicles on which the assessee claimed that the goods reached ~~to~~ them were ~~those of~~ motorcycle or scooter and not transport ~~of~~ vehicle, the burden shifts to the assessee to establish physical receipt of goods in their premises and the Tribunal remitted the case to the adjudicating authority to decide afresh in view of the Tribunal's decision in M/s Rajeev Alloys Ltd., vs. CCE reported in 2008 (89) RLT 227.

4. Following the same pattern in these cases also, I set aside the impugned orders and remand the cases to the adjudicating authority for fresh decision in the light of above orders of the Tribunal. Fresh orders are to be passed after extending reasonable opportunity to the assessees of being heard in their defence. The appeals are thus allowed by way of remand

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]