

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/1094/2006-SM[BR]

Date 22/05/2008

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

To :
CCE.BHOPAL

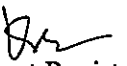
48,ADMINISTRATIVE AREA,AREAA
HILLS,HOSHANGABAD ROAD,BHOPAL
CCE.BHOPAL

Appellant

Vs
Respondent

M/S ORIENT PAPER MILLS

I am directed to transmit herewith a certified copy of Final order No. 795 /2008 -SM[BR] dated 28.3.2008
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 ORIENT PAPER MILLS

AMLAI(MP)

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 Publications (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. Office Copy

15. 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. III**

Excise Appeal No. 1094 of 2006 -SM (BR)

[Arising out of order in Appeal No. 185-CE/BPL/2005 dated 21.12.2005
passed by the Commissioner (Appeals) Customs & Central Excise,
Bhopal]

Date of Hearing/ Decision: 28.03.2008

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? | : | } W |
| 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

Appellant
[Rep. by Mr. Atul Rastogi, DR]

Vs.

M/s Orient Paper Mills

Respondent
[None]

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

Final ORDER No. 795/08-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the Revenue.

2. None appeared on behalf of the Respondent in spite of issue of notice. The Commissioner (Appeals) set-aside the Adjudication Order on merit as well as on limitation. It is seen from the order of the Commissioner (Appeals) that he has followed the following decision of the Tribunal in the case of Polyshose India Ltd., vs. CCE -2003 (152) ELT 361 (T), wherein payment of CVD through adjustment in DEPB was allowed. The Larger Bench of the Tribunal in the case of Essar Steel Ltd., vs. CCE, Vishakhapatnam reported in 2004 (173) ELT 239 (Tri. LB) distinguished the decision of the Tribunal in the case of Polyshose India Ltd. (supra).
3. Learned DR reiterates the ground of appeal. He submits that the Respondent have taken Cenvat Credit in July 2003 and April 2004 and first show cause notice was issued on 6.5.2004 and the second show cause notice was issued on 25.6.2004, which indicates that demands were raised during the normal period of limitation.
4. I find that in view of the decision of the Larger Bench and the submission of the learned DR on limitation, the matter is required to be re-examined by the Commissioner (Appeals). Accordingly, the

impugned order is set-aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the decision of the Larger Bench ^{panel} on limitation.

5. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

Ckp