

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/2610/2008 – SM[BR] WITH E/ STAY / 2628/2008

Date 11/02/2009

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

To :
M/S UNITED BREWERIES LTD.
C-60, FOCAL POINT, LUDHIANA.
M/S UNITED BREWERIES LTD.

C.C.E. LUDHIANA

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 158 /2009 –SM[BR] &S/38/2009** dated 6.2.2009 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. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult

MR.BHASIN SETHI & ASSOCIATE

401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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 Publications (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), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, 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 No. 2610 of 2008 – SM with Excise Stay No. 2628 of 2008

[Arising out of order-in-appeal No. 265/CE/Ludh./2008 dated 9.9.2008 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

Date of Hearing/Decision : 06.02.2009

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 United Breweries Limited

Appellant
[Rep. by Mr. V.R. Sethi, Advocate]

Versus

CCE, Ludhiana

Respondent
[Rep. by Mr. M.M. Singh, DR]

CORAM: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Stay order No. 38/09-SM (BR)
Final Order No. 158/09-SM (BR)

Per Jyoti Balasundaram:

For reasons recorded below, I waive pre-deposit of duty of Rs. 2,67,806/- together with equal amount of penalty and proceeded to hear and decide the appeal itself at this stage.

2. The duty demand was confirmed by the adjudicating authority on Carbon Dioxide Gas arising as a bye product in the course of manufacture of beer. Aggrieved by the confirmation of duty and ^{imposition of} ~~proposing~~ penalty, the assessee preferred an appeal before the Commissioner (Appeals) in terms of Section 35F of the Central Excise Act, 1944 seeking pre-deposit of duty and penalty. The Commissioner (Appeals) directed pre-deposit of Rs. 1 lakh (one lakh) each towards duty and penalty; the applicants sought modification of the direction for pre-deposit, relying inter-alia upon the favourable decision dated 24.10.2005 in their own case; however, the modification application was rejected and composite order in dismissing the appeal was passed. Hence, this appeal before the Tribunal.
3. In view of what is set out above, the impugned order is set aside and ^{remit} ~~and~~ the case for decision on merit to the Commissioner (Appeals) who shall pass fresh order without insisting of any pre-deposit, after extending the reasonable opportunity to the appellant of being heard in their defence.
4. The appeal is thus allowed by way of remand.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]