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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/336 /2009 - EX[DB] WITH E/S/350/2009 Date 30/03/2009

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

To :
M/S SHREE SHYAM PULP & BOARD MILLS LTD.
5TH KM STONE, MORADABAD ROAD, KASHIPUR,
DISTT: UDHAM SINGH NAGAR, UTTARA KHAND.

M/S SHREE SHYAM PULP & BOARD MILLS LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 249/09& S.O.NO.279/2009- **EX[DB]** dated 19-3-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R
~~4 I.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-15
15 Office Copy
16 Guard file
17. SR. P. S. TO PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision:19.03.2009

Excise Appeal No. 336 of 2009 With Excise Stay No. 350 of 2009

[Arising out of Order-in-Appeal No. 135-CE/MRT-II/2008 dated 31.10.2008 passed by the Commissioner of Customs and Central Excise, Meerut].

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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

M/s Shree Shyam Pulp & Board Mills Limited — Appellant

Vs.

CCE, Meerut — Respondent

Appearance:

Appeared for the Appellant - Mr. R.K. Hasija, Advocate
Appeared for the Respondent - Mr. Amit Jain, DR

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL Oral Order No. 279/09-EX

Per Justice R.M.S. Khandeparkar:

Heard learned Advocate for the appellant and the learned DR. The ground on which the present appeal has been filed is that, the Commissioner (Appeals) without considering the matter on merits rejected the appeal solely on the ground of failure to comply with the requirement of pre-deposit, in spite of the fact that the appellant has an arguable case on merits. It is not necessary to go into the facts of the case. Considering the rival contention, it is suffice to observe that in view of various earlier orders passed in the proceedings between the parties by the Tribunal, the appellant is justified in contending that there is no cause to the Commissioner (Appeals) to refuse the opportunity to the appellant to be heard on merits without insisting for such pre-deposit.

2. More particularly in view of the decision of the Larger Bench of this Tribunal in H.M.T. vs. Commissioner of Central Excise, Panchkula reported in 2008 (232) ELT 217 (Tri.-LB) as well as the stay orders passed in Appeal Nos. 1513 - 1515 and 1516 of 2007 and also in Appeal No.3521 of 2005 by this Tribunal, it was necessary for the Commissioner (Appeals) to take into consideration the fact of the said interim order passed in the said appeal before pressing for pre-deposit in the matter in hand. The interim order nowhere discloses the said aspect having been considered by the Commissioner (Appeals). In the circumstances, the appellant is justified in contending that there has been violation of rules of natural justice in the matter before the Commissioner (Appeals) and hence on this ground the impugned order is set aside and further the Commissioner is directed to dispose of the matter without insisting on any pre-deposit. In this view of the matter, the appeal is disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision: 19.03.2009

Stay Application No. 350 of 2009

M/s Shree Shyam Pulp & Board Mills Limited — Appellant

Vs.

CCE, Meerut — Respondent

Appearance:

Appeared for the Appellant - Mr. R.K. Hasija, Advocate
Appeared for the Respondent - Mr. Amit Jain, DR

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

STAY Oral Order No. 279/09 - Ex.

Per Justice R.M.S. Khandeparkar:

In view of the disposal of the appeal, stay application does not survive and stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/