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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/302 /2009-304 /2009 - EX[DB]
E/S/315-317/2009-EX

Date 30/04/2009

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

To :
M/S HERCULES INDUSTRIES
GP-37, HSIDC, SECTOR 18, GURGAON.

M/S HERCULES INDUSTRIES — Appellant
Vs
C.C.E. DELHI III — Respondent

STAY ORDER NO354-356/2009-EX

I am directed to transmit herewith a certified copy of **Final order No281-283/2009-EX[DB]** dated 27-4-09 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. DELHI III
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
   MR.D.N. MALHOTRA & R.K. HASIJA
   18, SHIVPURI, SAINT MICHEAL, HIGH SCHOOL ROAD, GURGAON-122001.
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 302-304 /2009-Ex(BR)
With Excise Stay Application No. 315-317/2009

[Arising out of Order-in-Appeal No. 235-237/ANS/GGN/150, 151 & 152/2008 dated 22.10.2008 passed by Commissioner (Appeals), Central Excise, Gurgaon]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	:	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. Hercules Industries — Appellant

Vs.

Commissioner of Central Excise
Gurgaon — Respondent

Appearance:

Mr. R.K. Hasija, Advocate for the Appellant
Mr. V. Choudhary, SDR for the Respondent

CORAM: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 23.4.2009

STAY **ORAL ORDER NO** .354-356/09-EX
FINAL ORDER NO 281-283/09-EX

Per M. Veeraiyan (for the Bench):

All these three appeals by the same ~~applicant~~ Party involves an identical issue and, therefore, are being disposed of by a common order.

2. Commissioner (Appeals) has not decided the issue on merits and by interim order ordered certain pre-deposit in terms of section 35F and same was admittedly not complied with by the appellants and therefore, the appeals were dismissed for non-compliance of the provisions of section 35F.

3. The learned advocate submits that after dismissal of their appeals, they have since paid the amount ordered to be pre-deposited by the Commissioner (Appeals) though belatedly. He also brings on record, the decision dated 16.4.09 by the Commissioner (Appeals) Delhi III on identical issue for the later period allowing the appeals of the same party.

4. The relevant facts are that the appellant was clearing the goods with the brand name of 'Minscot' and the original authority held that the appellant is not eligible for exemption under Notification No. 8/2003 dated 1.3.2003 on the ground that the appellant is not the owner of the trade mark. It is the case of the appellant that the trade mark authorities have by an order dated 21.11.08 have registered the brand name in their name with retrospective effect from 2.9.2005. Taking note of this development, Commissioner (Appeals) has allowed the appeal of the same party relating to later period.

5. In the light of the above, after waiving the pre-deposit of the dues as per the impugned orders, we set aside the orders of the Commissioner (Appeals) and remand the matter for fresh consideration in the light of the developments submitted by the learned Advocate and after granting reasonable opportunity of hearing.

6. Appeals are allowed by way of remand. The stay petitions are also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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