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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/3356/2005 - EX[DB]
EM/212/09-EX

Date 13/05/2009

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

To :
M/S THE INDS. GASES LTD.
148, TALKATORA ROAD, LUCKNOW, U.P.
226004

M/S THE INDS. GASES LTD. Appellant

Vs

C.C.E. LUCKNOW MISC ORDER NO.280/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 312/2009- **EX[DB]** dated 5-5-09

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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
MR.PRABHAT KUMAR
B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI
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. 3356 /2005- Ex(BR)

[Arising out of Order-in-Original No. 391-CE/2005 dated 26.7.2005 passed by Commissioner of Central Excise (Appeals), Lucknow.]

For approval and signature:

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

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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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : No

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M/s. The Industrial Gases Ltd. — Appellant
[Rep. by Shri Prabhat Kumar, Advocate]

Vs.

Commissioner of Central Excise
Lucknow — Respondent
[Rep. by Shri Virender Choudhary, DR]

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

Date of Hearing/decision : 5.5.2009

FINAL **ORAL ORDER NO. 312/09-EX**

Per Mr. Justice R.M.S. Khandeparkar (for the Bench):

Heard. The present appeal arises from order dated 26.7.05 passed by the Commissioner (Appeals), Lucknow. The appeal has been dismissed solely on the ground of non-compliance of provisions of Section 35F of Central Excise Act, 1944. When the said order was challenged by the appellant in the present appeal in the stay application filed in appeal, this Tribunal by order dated 19.12.2005 directed the appellant to deposit a sum of Rs. One lakh in terms of Section 35F of the said Act. Undisputedly, the said direction was duly complied with by the appellant.

2. Since there is no decision on merits by the Commissioner (Appeals) and the entire matter was disposed of solely on the ground of non-compliance of provisions of Section 35F of Central Excise Act, 1944, this Tribunal, in exercise of its power, directed the deposit of Rs. One lakh while waiving the requirement of pre-deposit of balance amount in the matter, we find that no purpose would be served keeping the matter pending further but rather it would be appropriate to direct the Commissioner (Appeals) to decide the matter before him on merits while considering the order dated 19.12.2005 passed by this Tribunal was under Section 35F and compliance thereof as sufficient compliance for the purpose of hearing of appeal by the Commissioner (Appeals).

3. In the circumstances, without expressing any opinion on merits of the case, we hereby set aside the impugned order dated 26.7.05 and remand the matter to the Commissioner (Appeals), Lucknow to decide the said appeal on merits. The deposit of Rs. One lakh to be treated by the Commissioner (Appeals) as due compliance under Section 35 F for the purpose of hearing the appeal before him

4. The appeal accordingly, stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

ss

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

Excise Misc. Application No. 212/2009- Ex(BR)
Excise Appeal No. 3356 /2005- Ex(BR)

M/s. The Industrial Gases Ltd. Appellant
[Rep. by Shri Prabhat Kumar, Advocate]

Vs.

Commissioner of Central Excise Respondent
Lucknow [Rep. by Shri Virender Choudhary, DR]

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

Date of Hearing/decision : 5.5.2009

misc **ORAL ORDER NO. 280/09-EX**

Per Mr. Justice R.M.S. Khandeparkar (for the Bench):

Heard. Considering the facts and circumstances of the case, we find the case having been made out for early hearing and disposal of Appeal No. 3356/2005.

2. Application is allowed and matter is directed to be placed for hearing forthwith.

3. Application is disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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