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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/1988/2007 – SM[BR] Date 05/05/2009

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

.To :
C.C.E ALLAHABAD

38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S U.P. STATE SUGAR CO. LTD. Respondent.

I am directed to transmit herewith a certified copy of **Final order No**. 346 / 2009 –SM[BR] dated 6.4.2009

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 U.P. STATE SUGAR CO. LTD.

UNIT BHATNI, DISTT, DEORIA, U.P.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI -110070.

3 S.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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/1988/07-SM

[Arising out of Order-in-Appeal No.20-CE/ALLD/07 dt.31.1.07 passed by the Commissioner(Appeals), Allahabad)

For approval and signature:

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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities:	:

CCE, Allahabad Appellant

Versus

M/s. U.P.State Sugar Corpn. Ltd. Respondent

Appearance

Shri R.K.Verma, Authorised Departmental Representative(DR) For Appellant
Shri Atul Gupta, CS for respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 6.4.09
Final Order No. 346/09-SM (BR)

Per Rakesh Kumar:

This is an appeal filed by the Revenue against order-in-appeal No.20-CE/ALLD/07 dt.31.1.07 passed by Commissioner(Appeals), Allahabad by which Revenue's appeal seeking enhancement of the penalty on the Respondent from Rs.2,000/- to Rs.10,000/- was rejected. The Revenue is in appeal before this Tribunal on the ground that the minimum penalty prescribed under Rule 13/15 of the Cenvat Credit Rules,2002/2004 is Rs.10,000/-.

2. Heard both the sides.

2.1 Shri R.K.Verma, Ld. DR reiterating the grounds of appeal pleaded that the minimum penalty prescribed under Rule 13 of Cenvat Credit Rules,2002/Rule 15 of Cenvat Credit Rules,2004 is Rs.10,000/- and that Commissioner(Appeals)order dismissing the Deptt.'s appeal in this regard is incorrect.

2.2 Shri Atul Gupta, Company Secretary, Ld. Counsel for the respondent pleaded that the issue as to whether penalty prescribed under Rule 25(1) of Central Excise Rules,2002 which is similar to Rule 13 of Cenvat Credit Rules/Rule 15 of Cenvat Credit Rules,2004 has been decided by the Larger Bench of the Tribunal in the case of CCE, Bhopal vs Rama Wood Craft Pvt. Ltd. reported in 2008-TIOL-615-DEL-LB, wherein the Tribunal has held that the words in Rule 25(1) of Central Excise Rules,2002 – "penalty, not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause(a) or clause (b) or clause(c) or clause (d) has been committed or rupees ten thousand, whichever is greater" – indicate only the maximum penalty which can be imposed and since the Rule 13/15 of Cenvat Credit Rules,2002/2004 on similary worded, the ratio of this judgment would apply to this case also. In view of this, he pleaded that there is no merit in the Revenue's appeal.

3. I have carefully considered the submissions from both the sides and perused the records. I find that the allegation against the Appellant is non-maintenance of the proper records for inputs and capital goods receipt are thereby contravention of the provisions of Rule 7(4)/9 of Cenvat Credit Rules,2002/2004. Even if for this contravention, penalty is imposable under "Rule 13/15 of Cenvat Credit Rules,2002/2004 read with Rule 25(1) of Rule 25(1) of Central Excise Rules,2002," in view of Tribunal(Larger Bench), judgement in the case of CCE, Bhopal vs Rama Wood Craft Pvt. Ltd.(supra), the penalty prescribed under sub-rule 1 of Rule 25 of Central Excise Rules is the maximum penalty and there is nothing in this Rule from which it can be informed that the penalty imposed under this Rule cannot be less than Rs.10,000/-. In view of settled legal position on this issue, there is no merit in the Revenue's appeal. The same is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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