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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/1913/2007 – SM[BR] Date 02/07/2009

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

To :
M/S VIVEK PRINTS
BATALA ROAD, AMRITSAR

M/S VIVEK PRINTS Appellant
Vs
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 638 / 2009 –SM[BR] dated 8.6.2009 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. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.
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
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)
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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

COURT – III

EXCISE APPEAL NO. 1913 OF 2007-SM

[Arising out of Order-in-Appeal No. 116/CE/Appl/Jal/2007 dated 30.3.2007 passed by the Commissioner (Appeals) Central Excise, Jalandhar, Chandigarh]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Vivek Prints — Appellant

Vs.

CCE, Jallandhar — Respondent

Appearance:

Shri R. Santhanam, Advocate for the appellant;
Shri R.K. Verma, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 8th June, 2009

FINAL ORDER NO. 638/2009-SM(BR) **dated** 8.6.09

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants were paying duty up to 31.3.2000 as per their determined capacity of production under Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998. There was a dispute, as to whether Galleries had to be treated as equipment of aiding the process of Heat Setting or drying process for determination of annual capacity of production. By order-in-appeal dated 25.9.2001 the Commissioner (Appeals) decided that galleries are not to be included for determination of Annual Capacity of Production of the appellants. In pursuance of the order of the Commissioner (Appeals), the appellants filed refund claim of Rs. 2,16,600/- on 17.10.2001. By order-in-original dated 27.11.2003 the Asst. Commissioner sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appeals). By Order dated 22.9.2005, Commissioner (Appeals) set aside Adjudication order dated 27.11.2003. During audit it was noticed that the issue of unjust enrichment was not examined vide Adjudication order dated 27.11.2003. Hence, a show cause notice dated 25.11.2004 was issued for recovery of erroneous refund. By adjudication order dated 30.11.2005 the original authority confirmed the recovery of refund, which was upheld by the Commissioner (Appeals).

2. Learned Advocate on behalf of the appellants submits that the refund was rejected on the ground of unjust enrichment as the appellants failed to produce any evidence that they have not passed on incidence of duty to the buyers. He submits that the appellants produced the evidences and therefore the Asst. Commissioner by his earlier order dated 27.11.2003 sanctioned the refund claim. He further submits that both the authorities below had totally ignored the evidences as recorded in earlier adjudication order dated 27.11.2003. He also submits that the Revenue filed appeal against the adjudication order dated 27.11.2003 whereby refund was sanction. The Commissioner (Appeals) allowed the appeal of Revenue. He submits that the appellants also challenged the order of the Commissioner (Appeals) before the Tribunal which is pending.

3. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that filing of the appeal before the Tribunal had not taken before the original authority and the Commissioner (Appeals). He further submits that the learned Advocate failed to produce any evidence even in the present appeal. He also submits that this appeal has no connection with the pending appeal. It is his submission that in this case the appellants failed to produce any evidence in support of unjust enrichment even before the Tribunal.

4. After hearing both sides and on perusal of the records, I find force in the submissions of the learned D.R. It is seen that recovery of refund

amount was ordered on a short point that the appellants failed to produce any evidence that incidence of duty had not been passed on to any person. The Commissioner (Appeals) also observed that the appellants have not produced any evidence. Learned Advocate relied upon the decision of the Tribunal in the case of Indra Processor vs. CCE, Jallandhar, reported in 2009 (236) ELT 164 (Tri.-Del.). It is seen that in the case of Indra Processor (supra) the appellants produced certificate of Chartered Accountant certifying schedule of balance sheet and other evidences. But in the present case no evidence was produced by the appellants and, therefore, the said case is not applicable herein. I also agree with the contention of the learned D.R. that the appellants had not mentioned the appeal number before the Tribunal against Order dated 22.9.2005 of Commissioner (Appeals) in the present matter as well as it has no relevance in the present matter.

5. Hence, I agree with the findings of the Commissioner (Appeals) that the appellants failed to produce any evidence in support of their contention that the incidence of duty had not been passed on to any person. Accordingly, appeal filed by the appellants is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK