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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

Date 08/07/2009

Appeal No. E/1057/2007 – SM[BR]

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

To : -
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL — Appellant
Vs
M/S PERL INDUSTRIES LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 662 / 2009 –SM[BR] dated 23.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S PERL INDUSTRIES LTD.
   SHED NO. 2-3, UDYOG VIHAR, INDUSTRIAL AREA, REWA (M.P.)
2. Adv. / Consult
   NONE;--------------

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)
16 Office Copy
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1057 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 252-CE/BPL/2006 dated 05/01/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Bhopal.]

For Approval and signature :
Hon'ble Shri 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, Bhopal — Appellant

Versus

M/s Perl Industries Ltd. — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 23/06/2009.

Final Order No. 662/2009 SM (BR) Dated : ___________

Per. Rakesh Kumar :-

This is an appeal by the Revenue against order-in-appeal No. 252/CE/BPL/2006 dated 05/1/07 passed by CCE (Appeals), Bhopal dismissing the Department's appeal for enhancing the penalty imposed on the respondent under Rule 173Q (1) to Rs. 5,000/-, as according to the Department, the minimum penalty imposable under Rule 173Q (1) for contraventions covered under Clause (a), (b) & (c) of Rule 173Q (1) is Rs. 5,000/-.

2. None appeared for the respondent. Heard Shri S. Gautam, the learned Departmental Representative who in support of his contention cited the Tribunal's order in the case of **CCE, Lucknow vs. Kisan Sahkari Chini Mills Ltd.** reported in **2006 (193) E.L.T. 365 (Tri. Del.),** wherein it was held that for wrong availment of Cenvat credit, the minimum penalty imposable under Rule 173Q (1) of Central Excise Rules is Rs. 5,000/-. He also pleaded that in view of the

irregularities found in the Respondent's factory - shortage of finished goods involving duty of Rs. 5,320/-, excess stock of inputs and unaccounted finished goods worth Rs. 3,20,500/-, penalty more than Rs. 1,000/- should have been imposed.

3. I have carefully considered the submissions of the learned Departmental Representative and perused the records. The ground on which the Department's appeal has been filed, is that from the wordings of Rule 173Q (1), as it existed during the period of dispute, the minimum penalty as prescribed for contraventions covered by Clause (a), (b) & (c) of Rule 173Q (1) is Rs. 5,000/- and that Commissioner (Appeal) has gone wrong in upholding the penalty of Rs. 1,000/- imposed by the Assistant Commissioner.

4. According to Rule 173Q (1) one of the Central Excise Rules, 1944 the penalty imposable on a manufacturer, producer, registered person of a warehouse, or a registered dealer for contraventions of the nature referred to in Clause (a), (b), (bb), (bbb), (c) or (d) of Sub-rule 1 is "<u>an amount not exceeding three times, the value of the excisable goods in respect of which the contravention has been committed or Rs.</u>

5,000/-whichever is greater." From the wordings of this Rule, it is clear that what this Rule is prescribes is only an upper limit of quantum of penalty which can be imposed for these contraventions. The Department's contention would have been correct if in place of the words "penalty not exceeding" the words "penalty equal" had been used. I find that same view has been taken by Tribunal in the case of **CCE, Bhopal vs. Rama Wood Craft (P) Ltd.** reported in **2008 (225) E.L.T. 348 (Tri. – LB)**. In view of this, I find no merit in the Revenue's appeal. The same is dismissed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK