TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 11/08/2009

Appeal No. ST/296 /2008 – SM[BR]

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

Appellant

C.C.E ALLAHABAD

Vs
Respondent

M/S BANSAL FOODS PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No.** 911 / 2009 –SM[BR] dated 30.7.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S BANSAL FOODS PVT. LTD.
E/33, RAM NAGAR,IND. AREA, CHANDAULI(U.P.)
2. Adv. / Consult
MR.ASHOK MITTAL F.C.A.
47/180, LUXA ROAD, DISTRICT-VARANASI (U.P.)
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
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Excise Appeal No.296 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.06-ST/ALLD/2008 dated 26.02.2008 passed by the Commissioner of Central Excise, Allahabad (U.P.)]

Date of Hearing/ Decision:30.07.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should 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? :

N

4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE, Allahabad (U.P.) ...Appellants
[Rep. by Shri S.N. Srivastava, DR]

Vs.

M/s. Bansal Foods (P) Ltd. ...Respondent
[Rep. by None.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 911/2009 SM (BR) Dated:30.07.2009

Per P.K. Das:

Revenue filed this appeal against the Order of the Commissioner (Appeals), whereby penalty was reduced from Rs.84,678/- to Rs.7,400/-.

2. After hearing the ld. DR and on perusal of the records, it is seen that the respondents were engaged in the business of flour mill and paying Service Tax on the services of transport of goods by road. The

respondents deposited the tax on 28.03.2006 for the period January, 2005 to February, 2006. The Original Authority imposed penalty of Rs.84,678/- under Section 76 and 77 of the Act. It is revealed from the impugned order that the Commissioner (Appeals) reduced the penalty following the Board's Circular No.341/18/2004-TRU(PT) dated 17.12.2004.

3. Ld. DR submits that the Circular dated 17.12.2004 is effective upto 31.12.2005. The contention of the ld. DR is that in the present case the respondent deposited the duty on 28.3.2006 and, therefore, the benefit under the Circular dated 17.12.2004 cannot be extended to the respondents.

4. I find that the Commissioner (Appeals) reduced the penalty on the basis of the Circular, which is not applicable to the present case. He has not considered the merits of the case in proper manner. Hence, to meet the ends of justice, it is appropriate to send back the matter to the Commissioner (Appeals) to decide afresh after considering the merits of the case.

5. Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide the matter afresh on merits. The appeal filed by the Revenue is allowed by way of remand.

Order dictated & pronounced in open court on 30.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.