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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/1235/2009 – SM[BR] E / STAY / 1216 / 20009 –SM[BR] Date 20/08/2009

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

To :
M/S B.T.ALLOYS LTD.
VILL. JANDIALI BUDHEWAL ROAD, LUDHIANA.

M/S B.T.ALLOYS LTD. Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1023 / 2009 –SM[BR]& S/429 /2009 Dated 3.8.2009

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. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.MOHINDER VIJ& ASSOCIATES,CA
   6, GIAN MARKET, G.T.ROAD, MILLER GANJ, OPP RAMGARTHAI GURUDWARA, LUDHIANA-141003
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, COURT NO. IV

Excise Appeal No. 1235 of 2009-SM(BR) &
Excise Stay Application No. 1216/09-SM(BR)

[Arising out of Order-in-Appeal No. 16-CE/LDH/2009 dated 28.1.2009 passed by Commissioner of Central Excise(Appeals), Chandigarh.]

For approval and signature:

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? : No
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? : Yes

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M/s. B.T. Alloys Ltd. Appellant

Vs.

Commissioner of Central Excise Respondent
Ludhiana

Appearance:

Shri J. Mohan Bansal, Advocate for the Appellant
Shri S.K. Bhaskar, SDR for the Respondent

Date of Hearing/decision : 3.8.2009

ORAL ORDER NO. 1023/2009 SM (BR)
S- 429/2009 SM (BR)

Per M. Veeraiyan:

After hearing both the sides for a while on the stay petition, I deem it proper to dispose of the appeal itself finally and accordingly, I waive the requirement of pre-deposit of the dues as per the impugned order and proceed to dispose of the appeal itself finally.

2. The appeal has been dismissed by the Commissioner (Appeals) by order dated 28.1.09 for non-compliance of stay order dated 24.11.2008 by which the appellant was directed to deposit entire amount of Rs.8,60,766/- towards duty and Rs.8,60,766/- as penalty. The Commissioner has not considered the appeal on merits.

3. Learned advocate appearing for the appellants submits that the Commissioner has ordered pre-deposit of the entire amount of duty demanded and the penalty imposed. Commissioner has not considered the merits of the case. The demand is based on the allegation of clandestine removal which has been confirmed taking average weight of 15 MT in 20 trucks merely based on certain statements. He also submits that they have deposited a sum of Rs.4,31,000/- on 30.7.09 without prejudice to their rights.

4. In as much as the applicant has paid Rs. 4,31,000/- towards the duty demanded, I deem it proper to set aside the order of the Commissioner (Appeals) and remand the matter to him for fresh consideration on merits. He shall hear the appellants without insisting on any further pre-deposit of

the dues. He shall dispose of the appeal after granting reasonable opportunity of hearing to the appellant.

5. The appeal is allowed by way of remand as above. Stay petition also stands disposed of.

(M. Veeraiyan)
Member(Technical)

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