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

Appeal No. E/1185/2009 – SM[BR] E / STAY /1183 / 2009 Date 02/09/2009

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

To :
M/S HERO CYCLES LTD.
HERO NAGAR, G.T.ROAD, LUDHIANA.

M/S HERO CYCLES LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1102 / 2009 –SM[BR]& S/ 500 / 2009 dated 24.8.2009 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.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 24.8.2009

Stay Application No.1183 of 2009 and Central Excise Appeal No.1185 of 2009

Arising out of the order in appeal No.83/CE/Ldh/09 dated 30.3.09 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

M/s Hero Cycles Ltd. .... Appellant/applicant

Vs.

C.C.E., Ludhiana .... Respondent

Appearance:

Shri Sudhir Malhotra, Advocate for the appellant/applicant
Shri R.K. Saini, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1102/2009 SM(Br)

S- 500/2009 SM(Br)

Per M. Veeraiyan :

Heard both sides on the stay petition for a while and it was felt expedient to dispose of the appeal finally , the pre-deposit is waived and the matter is taken up for final disposal.

2. It is submitted that CRD, a Division of Hero Cycles Ltd. supplied CR strips and steel tubes to their other unit manufacturing cycles paying duty at the rate of 16% even though the rate of duty was reduced to 8% vide Notification No.16/2004 dated 28.2.2004. The submission of the appellant

was that the cycle division has not taken any credit as they were not required to pay duty on the final product, namely, the bicycles. Such submission has been made in reply to the notice and the same has not been dealt with. The original authority confirmed the demand of Rs.1,35,445/- and imposed equal amount as penalty. Commissioner (Appeals) without deciding the case on merits dismissed the appeal for non-compliance of the stay order dated 28.1.2009 by which the appellant was directed to deposit Rs.70,000/- towards duty and Rs.70,000/- towards penalty.

3. The submission that the final product is not subject to duty and they have not taken any credit not to speak of credit on the higher rate goes to the root of the dispute. Since this requires factual verification ,it is felt appropriate that the matter is considered afresh. To enable the same, I set aside the order of the Commissioner (Appeals) and the order of the original authority and remand the matter to the original authority. The appellant is free to make further written submissions within 30 days from the date of receipt of this order and the original authority shall dispose of the matter afresh within 2 months thereafter after granting reasonable opportunity of hearing. It is clarified that no views are expressed on the merits of the case.

4. The appeal is allowed by way of remand. Stay petition is also disposed.

(M. Veeraiyan)
Member (Technical)

scd/