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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 03/09/2009

Appeal No. E/2252/2007 – SM[BR] E/MISC / 137 / 2008 E/C.O./257 / 2007

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 — Appellant
C.C.E BHOPAL

Vs

M/S S.S. CROP CARE LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1107 / 2009-SM[BR]&M/189 / 2009 dated 25.8.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S S.S. CROP CARE LTD.
   UNIT-II, NEAR LUN WATER TANK, INDL. AREA, GOVINDPURA, BHOPAL, M.P.
2. Adv. / Consult SHRI Z.U. ALVI ADV.
   D-8, B.D.A. COLONY KOTI FIZA BHOPAL

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 25.8.2009

Central Excise Appeal No.2252 of 2007 with Miscellaneous application No.137 of 2008 and Cross-Objection No.257 of 2007

Arising out of the order in appeal No.46-CE/BPL/2007-08 dated 6.7.08 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal.

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?	Yes
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

C.C. & C.Ex., Bhopal .... Appellant

Vs.

M/s S.S. Crop Care Ltd. .... Respondent

Appearance:

Shri I. Baig, Authorized Departmental Representative (SDR) for the Revenue and Shri Faizan Uddin Farooqui, Advocate for the respondents

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

Oral Order No. 1107/2009 SM (Br)
M- 189/2009 SM (Br)

Per M. Veeraiyan:

Appeal No.E/2252/07 is by the Department against the order of the Commissioner (Appeals) No. 46-CE/BPL/2007-08 dated 6.7.08 seeking to enhance the penalty to Rs.10,000/- from Rs.5000/- sustained by the Commissioner (Appeals). Cross-Objection No.257/07 is by the party seeking to set aside the penalty of Rs.5000/-. The Miscellaneous Application is also by the party seeking to introduce the additional grounds in the cross-objection.

2. Heard both sides. The application by the party to introduce additional grounds is allowed.

3. The party was found to have cleared the goods without payment of duty amounting to Rs.1,49,725/- manufactured in the factory for the purpose of testing during the period from January 2005 to November 2005. The duty demand is not under dispute. The duty involved along with interest stands paid. The original authority has in addition to confirming duty, imposed penalty of Rs.5000/-. The Department's appeal is for enhancement of the penalty .The Commissioner (Appeals) declined to interfere with the order.

4. The Department contends that the minimum amount of penalty prescribed, during the relevant period under Rule 25 is Rs.10,000/-.The issue whether the amount mentioned in Rule 25 is minimum or not was considered by the Larger Bench in the case of C.C.E., Bhopal vs. M/s Rama Wood Craft (P) Ltd. reported in 2008 (225) ELT 348 (Tri-LB) and it was held that the amount mentioned in Rule 173Q(1) of Central Excise Rules, 1944 or Rule 25(10 of Central Excise Rules 2002 are not the minimum. In view of the above, there is no reason to interfere with the concurrent findings of the original authority and the Commissioner (Appeals) and to enhance the penalty to Rs.10,000/- as prayed by the Department.

5. Similarly, it is not in dispute that duty was payable by the party and they have cleared the same without following the Excise formalities and without payment of duty for the purpose of testing. The duty liability is not being disputed. The provisions of Rule 25, in the given facts and circumstance of the case, are attracted and the penalty imposed is justified. In view of the above, the cross-objection filed by the party also fails.

6. The appeal by the Department for enhancement of penalty and the cross-objection by the party for vacation of penalty are ,therefore, rejected. Miscellaneous Application is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/