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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/2109/2007 – SM[BR] WITH C.O./ 226 / 2007 –SM[BR] Date 07/09/2009

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

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

C.C.E ALLAHABAD — Appellant
Vs
M/S SOMAIYA ORGANICS (INDIA) — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1124 / 2009 –SM[BR] dated 21.7.2009 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 SOMAIYA ORGANICS (INDIA)
   UNIT- CAPTAINGANJ DISTILLARY, CAPTAINGANJ DISTT. KUSHINAGAR
2. Adv. / Consult SHRI S.P. OJHA ADV.
   299, BAGHAMBARI HOUSING SCHEME, ALLAHAPUR ALLAHABAD

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

COURT – III

CENTRAL EXCISE APPEAL NO. 2109 OF 2007-SM WITH E/C.O./226 OF 2007-SM

[Arising out of Order-in-Appeal No. 45/CE/ALLD/2007 dated 27.3.2007 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad]

For approval and signature:

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

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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes.

CCE, Allahabad Appellant

Vs.

M/s. Somaiya Organics (India) Ltd., Respondents

Appearance:

Shri S.N. Srivastava, S.D.R. for the Revenue;
Shri S.P. Ojha, Consultant for the respondents

Coram:

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

Date of hearing/decision: 21st July, 2009

FINAL ORDER NO. 1124/2009 SM(BR) **dated**

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Ethyl Alcohol Denatured Spirit. The respondents deposited the differential duty for the period from 15.4.2000 to June, 2000. A show cause notice was issued proposing demand of interest under Section 11AB of Central Excise Act, 1944 along with imposition of penalty. The original authority confirmed the demand of interest of Rs. 4,57,984/- under Section 11AB of the Act. The respondents filed appeal before the Commissioner (Appeals) for setting aside adjudication order. Revenue also filed appeal before the Commissioner (Appeals) for imposition of penalty.

2. The Commissioner (Appeals) by order No. 101/CE/Alld/2006 dated 28.8.2006 rejected the appeal filed by the respondents and upheld the adjudication order. Subsequently, by the impugned order the Commissioner (Appeals) rejected the appeal filed by the Revenue on the ground that the adjudication order has already been merged with the earlier Order-in-Appeal dated 28.8.2006. Hence, Revenue filed this appeal against order of the Commissioner (Appeals).

3. Learned D.R. reiterates the grounds of appeal. He submits that the Revenue filed appeal before the Commissioner (Appeals) on different

issue insofar as imposition of penalty. On the other hand, respondents filed appeal before the Commissioner (Appeals) in respect of demand of interest. It is his contention that as the revenue's appeal is on different issue, the adjudication order cannot be merged with the earlier order-in-appeal. He relied upon the decision of the Hon'ble Supreme Court in the case of Maurya Udyog Ltd. vs. CCE, Delhi, reported in 2002 (146) ELT 37 (SC).

4. Learned Counsel on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) upheld the adjudication order in his earlier order dated 28.8.2006 and, therefore, adjudication order is merged with the earlier order-in-appeal. He relied upon the decision of the Hon'ble Supreme Court in the case of Kunhayammed vs. State of Kerala, reported in 2001 (129) ELT 11 (S.C.) [Para 44(i)]. He also relied upon the decision of the Larger Bench of the Tribunal in the case of CCE, New Delhi vs. LML Ltd. (Scooter Division), reported in 2002 (143) ELT 431 (Tri. – LB).

5. After hearing both sides, I find that there is no dispute that the appeal filed by the Revenue before Commissioner (Appeals) is on different issue. Order-in-appeal dated 28th August, 2006 against adjudication order is in connection with demand of interest. Revenue's appeal before the Commissioner (Appeals) is for imposition of penalty.

Hon'ble Supreme Court in the case of Maurya Udyog Ltd. (supra) held as under:-

"4. It is evident from the facts noticed above that the principle of merger has no applicability. The appeal of the Revenue was restricted to the reduction of the penalty amount by the Commissioner (Appeals). In the appeal of the appellant, the challenge was not only to the penalty but to the entire order including the order of the Commissioner confirming the demand and holding that the freight expenses of the appellant's factory to the buyers factory are includible in the assessable value. The restricted question which was the subject matter of the appeal of the Revenue, under these circumstances, cannot result in the dismissal of appellant's appeal by application of principle of merger. The said principle on the factual situation herein has no applicability whatsoever. Mr Rawal, the learned Additional Solicitor General very rightly did not support the order on the ground of merger has no applicability. The appeal of the Revenue was restricted to the reduction of the penalty amount by the ground of the applicability of the principle of merger.

5. It seems that the appellant had made the deposit of the amount, as stated in this appeal, in the treasury of the Central Government on 10th November, 2000 and as claimed only a debit entry remained to be made in the account books maintained

by the appellant. This fact, it appears, was not brought to the notice of the Tribunal when the appeal was directed to be struck off the register in terms of the order dated 12th December, 2000 and later impugned order was passed applying erroneously the principle of merger.

6. Under the aforesaid circumstances, we would set aside the impugned order and restore the appeal filed by the appellant against the order of Commissioner (Appeals) dated 8th August, 2000 to the file of the Tribunal to be decided on merits in accordance with law. The appeal is allowed on these terms leaving the parties to bear their own costs."

6. The decision of the Hon'ble Supreme Court in the case of Kunhayammed (supra) relied upon by the learned Advocate, the Court held that the doctrine of merger is not a doctrine of rigid and universal application. The application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. In the said case it has been held as under:-

"Where an appeal or revision is provided against an order passed by a court, Tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law."

7. I find that in the present case, the Revenue's appeal before Commissioner (Appeals) has been on different issue and it is squarely covered by the decision of the Hon'ble Supreme Court in the case of Maurya Udyog Ltd. (supra). In view of that, impugned order passed by the Commissioner (Appeals) is set aside. Matter is remanded back to the Commissioner (Appeals) to decide afresh in accordance with law. Appeal filed by the Revenue is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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