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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/2237/2007 – SM[BR] Date 29/09/2009

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

C.C.E BHOPAL — Appellant
Vs
M/S BALRAM SAHU & SONS — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1168 / 2009 – SM[BR]** dated 9.9.2009 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 BALRAM SAHU & SONS
   BALLABH NAGAR, SAGAR, M.P.
2. Adv. / Consult
   NONE;-----------------

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
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2237 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 17-CE/BPL/2007-2008 dated 11/05/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Bhopal.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Bhopal — Appellant

Versus

M/s Balram Sahu & Sons — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 09/09/2009.

Final Order No. 1168/2009-SM(BR) Dated : ____________

Per. Rakesh Kumar :-

A case of non-maintenance of the records of finished goods in the statutory records was booked against the respondent and 8,00,000/- biris carries valued at Rs. 50,000/- (Rupees Fifty Thousand) were seized on 09/11/2005. The Assistant Commissioner vide order-in-original dated 17/7/06 ordered confiscation of excess stock of biris under Rule 25 (1) of the Central Excise Rules, 2002 with option to redeem the same on payment of a Redemption fine of Rs. 3,000/- (Rupees Three Thousand) and beside this penalty of Rs. 5,000/- (Rupees Five Thousand) was imposed on the respondent under Rule 25 (1). The department not satisfied with the quantum of redemption fine and penalty, filed an application before the Commissioner (Appeals) and the Commissioner (Appeals) vide order No. 02-CE/REW/BPL/APPL/07-08/1298 dated 11th May 2007 dismissed the Department's review appeal. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the Department challenged the quantum of penalty. The quantum of penalty has been challenged on the ground that as per Rule 25 (1) the minimum penalty prescribed, is Rs. 10,000/- (Rupees Ten Thousand) and that penalty of Rs. 5,000/- is contrary to the provision of this Rule.

2. None appeared for the respondent. Heard Shri S. Gautam, the learned Departmental Representative who reiterated the grounds of appeal.

3. I have carefully considered the submissions of the learned Departmental Representative and have also perused the records. The goods had been seized for being in excess of the balance recorded in RG-12A register and looking to the nature of the contravention, I am of the view that the quantum of redemption fine looking to the value of the goods and nature of contravention; is adequate. As regards the quantum of penalty, I do not agree with the plea of the Revenue as from the words – "penalty not exceeding the duty on the excisable goods in respect of which any contravention of the

nature referred to in clause (a), clause (b) or clause (c) or clause (d) has been committed, or Rs. 10,000/-, whichever is greater", in Rule 25 (1), it is clear that what is prescribed is an upper limit of penalty, not the minimum penalty. if the duty involved is more than Rs. 10,000/- the upper limit would be the duty involved and if the duty involved is less than Rs. 10,000/-, the upper limit would be Rs. 10,000/-. Within the upper limit, the Adjudicating Authority has discretion to determine the quantum of penalty looking to the gravity of the offence. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK