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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/614 /2008 – SM[BR]WITH CO / 350 / 2008-SM[BR] Date 21/01/2010

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 JHUNJHUNWALA VANASPATI LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 91 / 2010 –SM[BR] dated 14.1.2010 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 JHUNJHUNWALA VANASPATI LTD.

VILL. NAUPUR.
P.O.THANAGADDI,
DISTT. JAUNPUR (U.P.)

2. Adv. / Consult SHRI S.P. OJHA CONSULTT.
299 BAGHAMBARI HOUSE SCHEME
ALLAHPUR 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
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision:14.1.2010

Central Excise Appeal No.614 of 2008-SM with Cross-Objection No.E/CO/350 of 2008-SM

Arising out of the order in appeal No.200-CE/ALLD/2007 dated 10.12.2007 passed by the Commissioner (Appeals), Central Excise, Allahabad.

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.E., Allabahad ... Appellant

Vs.

M/s Jhunjhunwala Vanaspati Ltd. ... Respondents

Appearance:

Shri S.K. Bhaskar Authorized Departmental Representative (JDR) for the Revenue and Shri S.P. Ojha, Consultant for the respondents

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

Oral Order No. 91/2010 SM(BR)

Per M. Veeraiyan:

The Department is on appeal against the order of the Commissioner (Appeals) No. 200-CE/ALLD/2007 dated 10.12.2007. Cross-Objection No.E/CO/350/08 is linked to the said appeal..

2. Heard both sides.

3. The relevant facts coming from the records are that there was explosion in the respondent's factory on 7.1.1995 in which some inputs and finished goods involving (a total duty amount of Rs.31,114/-) were destroyed. It is claimed that the respondents have filed an application dated 11.1.1995 seeking for remission of duty involved on goods destroyed. Show cause notice dated 22.6.95 was issued demanding duty on the goods so destroyed. The original authority passed the order dated 27.4.2007 confirming demand as proposed in the show cause notice issued about 12 years back. On appeal, the Commissioner (Appeals) set aside the order of the original authority directing him for awaiting the competent authority to decide on the issue of remission sought for.

4. The Department's appeal is based on the fact that the Commissioner has decided the remission as conveyed by the Superintendent (Tech.), Central Excise, Allahabad II Division vide letter C.No.V(30) Dem/153/95/589 dated 20.2.2006 as revealed in the cross-objection filed by the respondent.

5. It is not being disputed that there was explosion in the factory and certain goods were destroyed as claimed by the party. The application for remission has been kept pending for years together and no reason whatsoever is forthcoming for rejection of the remission except bald communication of the decision said to have been taken by the Commissioner. The validity of such communication without disclosing reason is not appreciated. The Commissioner (Appeals)'s observation therefore, cannot be considered irrelevant. The Superintendent (Tech.) vide communication dated 20.2.06 has ordered the party to pay the duty of Rs.38,123.45. If the Commissioner has already taken decision in this regard, the question of original authority deciding in 2007 demanding duty in pursuance of show cause notice dated 22.6.95 does not arise. The Commissioner (Appeals)'s order is not deciding the issue against the Department. The disputed amount

involved is also meagre. I do not find any merits in the appeal filed by the Department.

6. The appeal is, therefore, rejected. Cross-Objection is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/