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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/480 /2007 – 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 SHYAM DETERGENTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 100 / 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 SHYAM DETERGENTS
   MALACK BALAN, ATRAMPUR, NAWABGANJ, ALLAHABAD
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
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.E/480/07-SM Branch

[Arising out of Order-in-Appeal No.131-CE/ALLD/2006 dated 04.12.2006 of the Commissioner of Central Excise (Appeals), Allahabad (U.P.)]

Date of Hearing/ Decision:14.01.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		Yes
2. Whether it should be released under Rule 27 of the 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

CCE, Allahabad ...Appellants
(Rep. by Shri V.K. Saxena, Jt.CDR)

Vs.

M/s.Shyam Detergents ...Respondent
(Rep. by None)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No..100/2010 SM(BR)............../Dated:14.01.2010

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) rejecting the appeal of the Department against the order of the Original Authority in not imposing separate penalties on the Managing Director, Director and Project In-charge of the respondent-company.

2. None appears on behalf of the respondents.

3. Heard ld. Jt. CDR on behalf of the Revenue/appellant. He first clarified on the discrepancies earlier pointed out by the Bench vide Misc. Order No.244/2009 dated 23.11.2009 regarding date of the review order vis a vis date of filing of the appeal. It was clarified that the decision to file appeal by the Committee of Commissioners was taken on 23.02.2007 itself and not on 22.02.2007 and the file was produced for perusal. After perusal of the records, the explanation offered is accepted.

4. The relevant facts, in brief, are that the respondent-company is said to have used the brand name of their sister concern and that they have wrongly availed the exemption under Notification No.8/2003 for such branded goods. In pursuance of show cause notice dated 30.07.2003, the Original Authority confirmed the demand of duty of Rs.8,01,294/- along with interest; he also imposed equal amount as penalty under Section 11 AC on the respondent-company. However, he dropped the proceedings in respect of Shri Shyama Charan Gupta, the Managing Director, Shri Vipual Agrahari, the Director and Shri Vaibhav Agrahari, the Project In-charge all of the respondent company. On appeal by the Department seeking imposition of penalties on these three persons, the Commissioner (Appeals) declined the appeal of the Department. Thus, the Department

has filed appeal before the Tribunal against the concurrent findings of the Authorities below in not imposing penalty on them. The prayer is to "pass either suitable orders for setting aside the order-in-appeal". The Department has shown only M/s. Shyam Detergents as the respondent in their appeal memorandum.

5. Ld.Jt.CDR reiterates the grounds of appeal.

6.1 I have carefully considered the submissions and perused the records. No evidence of knowledge or intention on the part of these persons in relation to evasion by the company has been brought out. The Original Authority has dropped the proceedings against them. The Commissioner (Appeals) has concurred with the findings of the Original Authority with the following findings:-

> "*5.3 In the instant case, it is an admitted fact that the subject logo/monogram was used by M/s. Shyam Detergent with the mutual consent of Shri Shyama Charan Gupta, Managing Director of M/s.Shyam Works Limited, which was well within the knowledge of Shri Vidup Agrahari and Shri Vaibhav Agrhari. Such omission and commission conducted on their part have not only made the goods liable for confiscation but have also deprived them of the SSI exemption benefit otherwise available to them under Notification No.08/2002 which was not their intention. However, it can be*

safely said that if they had been aware of the fact that such omission and commission would make them disentitled for such exemption, they would not have used such logo being a suicidal step in this regard. Such logo was used by them in order to enhance marketability of the product but not with an intent to make the goods liable to confiscation or to evade duty which they have paid before issuance of the show cause notice. They were under the impression that they were entitled for exemption, therefore, they did not take Registration Certificate from the Department as required under Rules."

6.2 No evidence refuting the factual finding by the Commissioner (Appeals) have been relied upon. The Department has not even cited them as respondents.

7. In view of the foregoing, the appeal by the Department against the concurrent findings of lower authorities in favour of these persons is rejected.

Order dictated & pronounced in open court on 14.1.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.