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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/2829/2007 – SM[BR] Date 19/11/2009

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 BHSIL, UNIT PRATAPPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1457 / 2009 –SM[BR] dated 8.10.2009 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 BHSIL, UNIT PRATAPPUR
DISTT. DEORIA, (U.P),
BAJAJ HI9NDUSTAN SUGAR INDUSTRIES LTD.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

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-66
COURT-III

Date of hearing/decision: 8.10.2009

Excise Appeal No. 2829 of 2007-SM

[Arising out of Order-in-Appeal No.165 & 166/CE/Alld/07 dated 28.8.2007 passed by the Commissioner (Appeals), Customs & Central Excise, 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 should 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

Commissioner of Central Excise, Allahabad — Appellants

Vs.

M/s. BHSIL Ltd. — Respondents

Appearance:

Shri V.K. Saxena, Jt.CDR for the Appellants
Shri Bipin Garg, Advocate for the Respondents

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1457/2009 SM(BR)

Per P.K. Das :

Relevant facts of the case, in brief, are that the original authority confirmed the demand of duty of Rs.24,990/- and imposed penalty of Rs.8,000/- under Rule 25 of the Central Excise Rules, 2002. The respondent filed appeal before Commissioner (Appeals) whereby adjudication order was set aside. Revenue also filed appeal before the Commissioner (Appeals) for imposition of minimum penalty of Rs.10,000/- under Rule 25 of erstwhile Central Excise Rules. Commissioner (Appeals) rejected the appeal filed by the Revenue. Hence, the Revenue filed this appeal.

2. Heard learned Jt.CDR on behalf of the Revenue. It is contended by the Revenue in the grounds of appeal that the Commissioner (Appeals) passed the order nullifying the decision of the Tribunal in the case of Kisan Sahkari Chini Mills Ltd. vs. CCE Allahabad [2005 (69) RLT 433 (CESTAT-Del)] . It is also contended that the penalty under Rule 25 of the rules cannot be imposed less than Rs.10,000/-. Learned Jt. CDR contends that the amount of penalty of Rs.10,000/- under Rule 25 of the Rules is mandatory in nature.

3. I am unable to accept the submission of the learned Jt. CDR. The Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Bhopal vs. Rama Wood Craft (P) Ltd. [2008 (225) ELT 348 (Tri-LB)] held that there is no minimum penalty prescribed under the Rules. For that

reason, the order of the Commissioner (Appeals) cannot be said to be improper.

4. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(P.K.Das)
Member(Judicial)

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