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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/3029/2007 – SM[BR] WITH CO/ 147 / 2008 –SM[BR] Date 02/12/2009

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 MODERN LAMINATORS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1477 / 2009 –SM[BR] dated 24.11.2009 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 MODERN LAMINATORS LTD.
C-4, INDUSTRIAL AREA, GORAKHPUR, (UP)
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 24.11.2009

Central Excise Appeal No.3029 of 2007-SM with Cross-Objection No.147 of 2008-SM

Arising out of the order in appeal No.169/CE/ALLD/2007 dated 29.8.2007 passed by the Commissioner, Customs, Central Excise & Service Tax, Allahabad.

For Approval and Signature:

Hon'ble Mr. 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., Allahabad ... Appellant

Vs.

M/s Modern Laminators Ltd. .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue and none for the respondent

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

Oral Order No. 1477/2009 SM(BR)

Per M. Veeraiyan:

Appeal No.E/3029/07 is by the Department against the order of the Commissioner (Appeals) No. 169/CE/ALLD/2007 dated 29.8.2007. Cross-Objection No.E/CO/147/08 is arising out of the above appeal.

2. None appears for the respondent in spite of notice. Heard the learned SDR.

3.1 The original authority vide order dated 16.11.2006 confirmed the demand of duty of Rs.2,21,390/- along with interest and imposed penalty of

Rs.3,000/-. Records reveal that against the said order, the party filed an appeal and vide order dated 26.3.2007, the Commissioner (Appeals) has allowed the appeal of the party.

3.2 Commissioner ~~(Appeals)~~, thereafter by order dated 12.4.07 reviewed the order of the original authority dated 16.11.2006 and directed filing of appeal on a short point that the penalty imposed should have been a minimum of Rs.10,000/- as against Rs.3,000/- imposed by the original authority. The appeal filed in pursuance of the review order stands dismissed by the Commissioner (Appeals) vide impugned order dated 29.8.07.

4. As the order of the original authority dated 16.11.2006 stands set aside vide order dated 26.3.07 by the Commissioner (Appeals), the order in review dated 12.4.07, in effect, reviewed a non-existing order. On the basis of that review order, the Department has filed the present appeal seeking enhancement of penalty from Rs.3,000/- to a maximum of Rs.10,000/- whereas by that time, the order imposing penalty I of Rs.3000/-itself is not in force.

5. In view of the above, the appeal by the Department is rejected as not maintainable. Cross-Objection is also disposed off.

(M. Veeraiyan)
Member (Technical)

scd/