TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2993 – 2994 / 2004 –SM[BR] Date 20/10/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
(1-2) M/S HERBICIDES INDIA PVT. LTD.
12 INDL. AREA JHOTWARA JAIPUR RAJASTHAN
M/S HERBICIDES INDIA PVT. LTD. Appellant
Vs
C.C.E.JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1288 - 1289 / 2009-SM[BR] dated 22.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E.JAIPUR
   N.C.R.B.STATUE CIRCLE JAIPUR
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR –III
   NEW DELHI-24.

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

Excise Appeals Nos.E/2993-2994 of 2004-SM (BR)

[Arising out of Order-in-Appeal No.58-59(SN)/CE/JPR-I/2004 dated 5.2.2004 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:22.09.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

---

1. Whether Press Reporters may be allowed to see 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

---

(1)M/s. Herbicides India (P) Ltd. ...Appellants
(Rep. by Shri H. Bajaj, Advocate)

Vs.

CCE, Jaipur-I ...Respondent
(Rep. by Shri V.K. Saxena, Jt. CDR)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 1288-1289/2009 SM (BR)/Dated:22.09.2009

Per P.K. Das:

These appeals arise out of a common order and, therefore, both are being taken up together for disposal.

2. The Appellant No.1 filed this appeal against the demand of duty of Rs.5,90,872/- and penalty of equal amount. along with penalty of Rs.18,456/-. The Appellant No.2, the Authorised Signatory of the Appellant Company filed appeal against imposition of penalty of Rs.3,000/- under Rule 209A of the erstwhile Central Excise Rules, 1944.

3. After hearing both the sides and on perusal of the records, I find that the Original Authority confirmed the demand of duty of Rs.8,41,705/- and imposed penalty of equal amount on the Appellant No.1 raised on the basis of parallel invoices. The Commissioner (Appeals) modified the demand of duty and reduced to Rs.5,90,872/- on the basis of the report of the Asstt. Commissioner vide letter dated 11.11.2003. The Commissioner (Appeals) observed that the appellant did not receive back the goods in question involving duty of Rs.5,90,872/- and they were not entitled to get the benefits extended under Rule 173 H as no re-processing of the said goods were done. The contention of the ld. Advocate is that the goods in question were not received at their factory. In other words, it is contended that as revealed from the chart, the goods in question were sold on the basis of commercial invoices from the transporter as well as dealer's premises. He submits that the report dated 11.11.2003 was not disclosed to the appellant. However, ld. Jt. CDR had handed over the copy of the report dated 11.1.1003 along with copies of the invoices in the Court to the ld. Advocate.

4. I find that the Commissioner (Appeals) modified the adjudication order on the basis of Report dated 11.11.2003 of Assistant Commissioner, which was not disclosed to the appellant. To meet the ends of justice, the appellants should be given an opportunity to represent their case before the Commissioner (Appeals) on the basis of the report dated 11.11.2003.

5. In view of the above discussions, the impugned order in so far as demand of Rs.5,90,872/- and penalty of equal amount along with penalty of Rs.18,456/- on shortage of goods and the penalty on the Appellant No.2 are set aside. The matters are remanded back to the Commissioner (Appeals) to decide on the basis of the submission of the appellants. It is [illegible] ~~revealed~~ that the report dated 11.11.2003 along with invoices have already been handed over to the ld. Advocate by the Jt. C.D.R. today in the Court. The Commissioner (Appeals) would provide reasonable opportunity of hearing before decision. Both the appeals are allowed by way of remand in the above terms.

Order dictated & pronounced in open court on 22.09.2009.

(P.K. Das)
Member (Judicial)

Ckp.