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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/239 /2007 – SM[BR] WITH E/CO/307/2008-SM[BR] Date 29/10/2009

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR

208005

C.C.E. KANPUR Appellant

Vs

M/S PREMIUM SUITINGS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final orderNo.** 1332 / 2009 –SM[BR] dated 30.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S PREMIUM SUITINGS (P) LTD.

G - 6 TO 8, UPSIDC INDUSTRIAL AREA, JAINPUR, KANPUR (DEHAT)

2. Adv. / Consult SHRI R. SANTHANAM ADV.
C-3/210, JANAKPURI NEW DELHI-58.

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

COURT-IV

Date of hearing/decision: 30.9.2009

Central Excise Appeal No.239 of 2007-SM with Cross-Objection No.E/307/2008

Arising out of the order in appeal No.543-CE/APPL/KNP/06 dated 19.10.06 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

C.C.& C.Ex, Kanpur .... Appellant

Vs.

Premium Suitings (P) Ltd. .... Respondent

For Approval and Signature:

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?	NO
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

Appearance:

Shri R.K.Verma, Authorized Departmental Representative (JDR) for the Revenue and none for the respondent(s)

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

Oral Order No. 1332/2009 SM (Br)

Per M. Veeraiyan :

This is an appeal by the Department against the order of Commissioner (Appeals) No. 543-CE/APPL/KNP/06 dated 19.10.06. Cross-Objection No.E/307/08 is related to the above appeal which is merely in support of the order of the Commissioner (Appeals).

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

3. The respondent is a manufacturer of processed fabrics. During the relevant period, they were covered under the compounded levy scheme.

They were required to pay the pre-determined amount on fortnightly basis during the period in dispute. As against Rs15,88,600 which was due to be paid by 15th July 1999, they paid only Rs.13,04,600/- on 15.7.1999 and the balance of Rs.2,84,000/- was paid only on 26.7.1999. The original authority imposed a penalty of Rs.2,84,000/- under sub-rule 5(ii) of erstwhile 96ZQ of the then Central Excise Rules, 1944 read with the provisions of Section 38A of the Central Excise Act, 1944. On appeal by the party, the Commissioner (Appeals) taking note of the deletion of Rule 96ZQ in the year 2001 itself and also taking note of the amendment by Notification No.52/99-CE(NT) dated 13.8.99 to the Notification No.18/99-CE(NT) 28.2.99 held that no penalty was imposable as the entire amount was paid before the end of the month.

4. Learned DR submits that during the relevant time, penalty equal to the amount outstanding on the due date, was imposable in cases of delay. In the present case, the duty was due to be paid latest by 15.7.99 and the deletion of Rule 96ZQ in 2001 does not change the position as held by the Hon'ble Punjab & Haryana High Court in the case of Shree Bhagwati Steel Rolling Mills vs. C.C.E., Chandigarh reported in 2007 (207) ELT 58 (P & H). He also submits that penalty equal to duty amount outstanding by the due date was rightly imposable. In this regard, he relies on the decision of the Hon'ble Supreme Court in the case of UOI vs. Dharmendra Textile Processors reported in 2008 (231) ELT 3 (SC).

5. I have carefully considered the submissions by the learned DR and perused the records. The respondent has also filed cross-objection in support of the order of the Commissioner (Appeals). I find that the decision of the Hon 'ble Punjab & Haryana High Court in Shree Bhagwati Steel Rolling Mills and the decision of the Hon'ble Supreme Court in Dharmendra Textile Processors are not available when the decision was taken by the Commissioner (Appeals). The respondents are not represented in the present proceedings. In view of the above, I deem it proper to set aside the order of the Commissioner (Appeals) and remand the matter for de novo

consideration by the Commissioner (Appeals) after granting reasonable opportunity of hearing to both sides.

6. The appeal is allowed by way of remand. Cross-objection is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/