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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/2794/2007 – SM[BR] Date 17/11/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S INDO LAHARI BIO POWER LIMITED Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1424 / 2009 –SM[BR] dated 11.11.2009 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 INDO LAHARI BIO POWER LIMITED
   KHARORA ROAD, JAROUDA, DISTT- RAIPUR(CG)
2. Adv. / Consult SHRI ATUL GUPTA CO.SEC.
   B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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, COURT NO. III

**Excise Appeal No. 2794 of 2007-SM(BR)**

[Arising out of Order-in-Appeal No. 147/RPR-I/2007 dated 17.7.07 passed by Commissioner of Central Excise (Appeals I), Raipur]

**For approval and signature:**

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

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1. Whether Press Reporters 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 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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Central Excise
Raipur — Appellants

Vs.

M/s. Indo Lahari Bio Power Ltd. — Respondent

**Appearance:**

Shri Sansar Chand, SDR for the Appellants
Shri Atul Gupta, Company Secretary for the Respondent

Date of Hearing/decision : 11.11.2009

## ORAL ORDER NO. 1424/2009 SM(BR)

**Per M. Veeraiyan:**

This appeal by the Department against the order of the Commissioner (Appeals) dated 17.7.07 is seeking to raise the penalty to Rs.1,75,142/- as against the 25% of Rs.1,75,142/- upheld by the Commissioner (Appeals).

2. Heard both sides and perused the records.

3. The learned DR submits that as it is a clear case of clandestine removal and mandatory penalty equal to duty evaded is to be sustained and therefore, he seeks modification of the order of the Commissioner (Appeals).

4. Learned Company Secretary appearing for the respondent company submits that entire duty stands paid before issue of show cause notice. He relies on the decision of the Hon'ble High Court of Delhi in the case of K.P. Pouches (P) Ltd. vs. Union of India reported in [ 2008 (228) ELT 31 (Del)] in which it has been held that in terms of first proviso to section 11 AC, penalty imposed required to be paid is only 25% of the duty demand confirmed against them.

5. After careful consideration, I hold that facts of the present case are substantially the same as in the case of K.P. Pouches (P) Ltd. and therefore, the order of the Commissioner (Appeals) reducing the penalty to 25% of the duty demand confirmed calls for no interference.

6. Appeal by the Department is, therefore, rejected.

( M. Veeraiyan )
Member(Technical)

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