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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/3183/2010 – SM[BR]** & E/Stay/2967/2010-SM(BR) Date **05/05/2011**

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

To :
M/S VACMET INDIA LIMITED (UNIT-III),
FORMERLY KNOWN AS VACMET PACKAGINGS
(INDIA) PVT. LTD. (UNIT-III)
A-5 & C-7, UPSIDC INDUSTRIAL AREA, KOTWAN,
KOSI KALAN, MATHURA.

M/S VACMET INDIA LIMITED (UNIT-III), Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 261/2011-SM[BR]&S/204/2011 dated 29.4.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR. SAURABH YADAV ADV.
A-5, BASMENT LAJPAT NAGAR-III , NEW DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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. 3183 of 2010-SM(BR)
Excise Stay Application No. 2967 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 132-ST/LKO/2010 dated 14.7.10. passed by the Commissioner of Central Excise (Appeals), Lucknow]

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? : NO

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? : NO

M/s. Vacmet India Ltd. — Appellants

Vs.

Commissioner of Central Excise Lucknow — Respondent

Appearance:
Shri Saurabh Yadav, Advocate for the Appellants
Shri K.P. Singh, SDR for the Respondent

Final

Date of Hearing/decision : 29.04.2011

ORAL ORDER NO. 261/2011 SM & S-204/2011 SM (BR)

Per M. Veeraiyan:

Heard both sides.

2. Considering that the order passed by the Commissioner (Appeals) was ex-partie ~~and on erroneous facts~~, pre-deposit of dues as per the impugned order is waived and appeal itself is taken up for final disposal.

3. Original authority vide order dated 21.10.09 confirmed demand of Rs.72,220/- along with interest and imposed equal amount as penalty. Commissioner (Appeals) vide Stay order dated 2.6.10 directed the appellant to deposit 25% of duty involved and 25% penalty involved. The Commissioner (Appeals) has recorded "no report has been received from the adjudicating authority regarding deposit of amounts under section 35F of the Central Excise Act, 1944." Further, it is seen that no personal hearing has been given before deciding the issue. Inasmuch as the order has been passed without affording an opportunity to the appellants by the Commissioner (Appeals), the same deserves to be set aside and matter remanded to the Commissioner (Appeals) for fresh consideration after granting reasonable opportunity of hearing and without insisting ~~of~~ on further pre-deposit.

4. Appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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