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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/2695/2009 – SM[[BR] **Date 09/11/2011**

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 GOVIND MILLS LTD, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 750 / 2011-SM[BR]** dated 5.10.2011 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 GOVIND MILLS LTD,
BARGADWA VIKAS NAGAR,
GORAKHPUR, (U.P.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K. Puram, NEW DELHI

COURT No. II

Excise Appeal No. 2695 of 2009(SM)

[Arising out of Order-In-Appeal No.89/CE/ALLD/2009, dated 3.7.2009 issued by CCE, Allahabad]

Date of Hearing / Decision : 05.10.2011.

For approval and signature:
Hon'ble Mr. D.N.Panda, Judicial Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Allahabad — Appellant
Versus
M/s Govind Mills Ltd. — Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Present for the Appellant - Shri A.Khanna, DR
Present for Respondent - Shri Bipin Garg, Advocate

Final Order No. 750/2011 SM (BR) Dated :__________

Per D.N. Panda:

Ld. DR submits that merely because of ingredients of Section 11AC of Central Excise Act, 1944 was not mentioned in the Show Cause Notice (SCN), the Appellate Authority should not have exonerated respondent from penalty. The SCN dated 8.2.2005 brings out how the contravention of law was made. Therefore, Revenue's appeal should succeed.

2. Ld. Counsel on the other hand for respondent, supports the appellate order.

3. Heard both sides. Perusal of para 5 to 7 of the appellate order clearly shows that the Appellate Authority below was quite conscious of the Apex Court decision in Rajasthan Spinning Mills Ltd. reported in 2009(238)ELT3(SC). But ld. DR objects to application of judgement of Rajasthan Spinning Mills because the matter related to 2005 and at relevant point of time that judgement was not there. Such a proposition is unacceptable because law declared by Apex Court is the law laid down under Article 141 of the Constitution and shall be said to be in existence all along. Therefore, the penalty provision invoked under Rule 173Q when is required to be read with section 11AC of Central Excise Act, 1944, ld. Appellate Authority was correct to examine the issue of penalty in the light of Section 11AC, following the Apex Court decision in Rajasthan Spinning case. In para 7, that authority found absence of ingredients of Section 11AC of Central Excise Act, 1944. When such a finding comes forward, Revenue's appeal was dismissed by first Appellate Authority. There appears no legal infirmity in the order of the said Authority. Revenue's appeal is accordingly dismissed.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I