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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/3641/2010 – SM[BR] **Date 02/01/2012**

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

To :
M/S M.B. RUBBER PVT. TD.,

D-13,14, SITE-IV, INDUSTRIAL AREA SAHIBABAD.
(GHAZIABAD)

M/S M.B. RUBBER PVT. TD., Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 963/2011-SM[BR]** dated 26.12.2011 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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

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 (Harvana)
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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. IV

Central Excise appeal No. 3641 of 2010-SM

(Arising out of Order-in-Appeal No. 132-CE/Appl/GZB/2010 dated 20.7.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Ghaziabad)

Date of Hearing/decision: 26th December, 2011

For approval and signature:

Hon'ble Shri 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?	

M/s. M.B. Rubber Pvt. Ltd., Appellant

Vs.

CCE, Ghaziabad Respondent

Present for the Appellant : Shri S.D. Gaur, Consultant
Present for the Respondent : Shri R.K. Verma, DR

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

FINAL ORDER NO. 963/2011 SM(BR)

Per D.N. Panda:

Learned Counsel says that when the appellate authority reduced the penalty from Rs. 1,02,196/- to Rs. 10,000/- applying provision of Section 80 of the Finance Act, 1994 there was no reason why entire waiver of penalty was not done. He further states that in compliance to stay order dated 23.9.2011 tax and interest liability was discharged in cash and the deposit so made is not claimed for refund.

2. Learned D.R. on the other hand, supports the appellate order.

3. Heard both sides and perused the record.

4. Revenue is not in appeal against the first appellate order. Therefore, grievance of the appellant deserves consideration on the quantum of reduction in penalty. Learned Appellate authority on page 3 of the order has appreciated that there was interpretation of law involved in this case for which he invoked Section 80 of the Finance Act, 1994 for exercise of discretion. It appears that the appellant was subjected to litigation for the above reason. Considering that judicious exercise of discretion shall meet end of justice annulling penalty of Rs. 10,000/- even when the appellant prays to resolve the dispute paying taxes and interest, that is done. In the result, confirming tax and interest penalty leveled is annulled modifying the first appellate order to reduce the penalty to nil.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK