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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

Date 15/02/2010

Appeal No. E/238 /2008 – SM[BR]

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant

Vs

M/S DHILLON KOOL DRINKS & BEVERAGES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 214 / 2010 –SM[BR] dated 3.2.2010 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 DHILLON KOOL DRINKS & BEVERAGES LTD.
   PHILLAUR.
2. Adv. / Consult
   NONE;--------------------

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-III

Date of hearing/decision: 3.2.2010

Central Excise Appeal No.238 of 2008-SM

Arising out of the order in appeal No.339/Cus/Appl/Jal/2007 dated 1.11.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. 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?	Yes
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

C.C.E., Jalandhar ... Appellant

Vs.

M/s Dhillon Kool Drinks & Beverages Ltd. ... Respondent

Appearance:

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

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

Final Oral Order No. 214/2010 SM-(BR)

Per M. Veeraiyan:

This is a frivolous appeal by the Department against the order of Commissioner (Appeals) No. 339/Cus/Appl/Jal/2007 dated 1.11.2007 by which the Commissioner (Appeals) rejected the Department's appeal for enhancement of the penalty from Rs.1000/- to Rs.10,000/- in a case involving order for recovery of a sum of Rs.1,790/- of irregular credit along with interest.

2. The ground of appeal is that Rule 15 of the Cenvat Credit Rules, prescribes a minimum penalty of Rs.10,000/-. Rule 15 of the Cenvat Credit Rules reads as under:

> ***"RULE 15. Confiscation and penalty. — (1) If any person, takes CENVAT credit in respect of input or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said input or capital goods has been paid as indicated in the document accompanying the input or capital goods specified in rule 9, or contravenes any of the provisions of these rules in respect of any input or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater".***

It is seen that the above Rule prescribes only upper limit on the quantum of penalty. There is no reason to hold that there is a minimum of Rs.10,000/- as penalty ~~has been~~ stipulated under the said Rule. The Rule, nowhere, mentions about Rs.10,000/- as minimum penalty. This issue also stands settled holding that there is no minimum penalty prescribed under Rule 25(1) of Central Excise Rules, 2002 in the case of C.C.E., Bhopal vs. Rama Wood Craft (P) Ltd. reported in 2008 (225) ELT 348 (Tri-LB). It is to be noted that Rule 25(1) of the Central Excise Rules is similarly worded as Rule 15 of the Cenvat Credit Rules, 2004

3. The appeal has no merit whatsoever and is accordingly rejected.

(M. Veeraiyan)
Member (Technical)

scd/