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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/659 /2006 – SM[BR] Date 09/09/2010

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

To :
ABHISHEK EXPORTS.

ABHISHEK EXPORTS.280-H, UDYOG VIHAR, N.H.-8
SUKHER, UDAIPUR.
ABHISHEK EXPORTS. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 970 / 2010-SM[BR] dated 1.9.2010 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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-IV

Date of hearing: **1.9.2010**

Excise Appeal No. 659 of 2006-SM

[Arising out of Order-in-Appeal No. 438(HKS)/CE/JPR-II/2004 dated 22.7.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur]

For approval and signature:

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

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?	No

M/s Abhishek Exports — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance:

Appeared for the Appellant - Shri Bipin Garg, Advocate

Appeared for the Respondent - Shri R.K. Gupta, SDR

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

Final

Order No. 970/2010 SM (Br)

Per M. Veeraiyan:

Heard both sides.

2. The appellant's premises was visited by the officers on 5.8.2004 and they found 375.29 Sqm. of marble slabs valued at Rs.3,72,839/- in excess and the same were confiscated by the original authority with an option to redeem the same on payment of fine of Rs.50,000/- which stands upheld by the Commissioner (Appeals).

3. Ld. Advocate submits that the appellants were a 100% EOU. As stated by Shri Paras Rajgarhia, the excess amount of stock might have accumulated over a period of years by dispatches of wrong measurement of marble slabs cleared by unskilled labourers. Therefore, he seeks setting aside the confiscation and penalty.

4. Ld. DR reiterates the finding and reasoning of the Commissioner (Appeals).

5. As a 100% EOU, the appellant cannot escape from their obligation to maintain the account of production on day-to-day basis. The excess stock found was 375.29 Sqm. of marble slab which is substantial quantity. The explanation given by the appellants has been not found to be convincing and the same has been rightly rejected by the lower authorities.

6. In view of the above, I hold that the goods are liable for confiscation and penalty is also warranted.

7. However, considering that the appellant is a 100% EOU and considering the nature of violation, I deem it proper to reduce the redemption fine from Rs.50,000/- to Rs.20,000/- (Rupees Twenty thousand only) and the penalty from Rs.5000/- to Rs.2000/- (Rupees Two thousand only).

8. The appeal is accordingly disposed off.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM