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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/2635/2008 – SM[BR] Date 14/09/2010

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S FORGE N FORGE Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 981 / 2010 –SM[BR] dated 7.9.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S FORGE N FORGE
   F-773, ROAD NO 9, V.K.I AREA, JAIPUR(RAJ)
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. 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No. 2635 of 2008-SM (BR)
[Arising out of Order-in-Appeal No. 194(DK)CE/JPR-I/2008 dated 24.9.2008 passed by the Commissioner (Appeals-I) Central Excise, Jaipur]

Date of Hearing/ Decision: 07.09.2010

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?	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

CCE, Jaipur-I ...Appellant

Vs.

M/s Forge 'N' Forge ....Respondent

Appearance: Sh. R.K. Gupta, SDR appeared for the appellant.
None for the respondent.

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

Final Oral Order No. 981/2010 SM (Br)

Per M. Veeraiyan:

This appeal by the department is against the order of Commissioner (Appeals) by which the order of the original authority ordering forfeiture of the facility to pay duty in monthly instalments under Rule 8(1) of the Central Excise Rules, 2002 for a period of two months from the date of communication of the order dated 28.11.2005 was modified. The matter is before the Tribunal for the second time.

2. Heard the learned SDR. None appears for the respondent and the hearing notice has been returned saying that party has left.

3. Learned SDR reiterates the grounds of appeal.

4. I find from the records that there was delay in payment of Rs. 95,000/- which is part amount of duty which was payable through PLA for the month of June 2005 and the said amount has been paid alongwith interest of Rs. 1052/- on 12.08.2005. The original authority ordered for forfeiture of the facility to pay in monthly instalments for a period of two months. Commissioner (Appeals) has held that the respondent has paid duty consignmentwise through PLA/cash after receipt of the order of the original authority till 06.12.2005. This fact has nowhere been refutted by the department. It is not a case of any revenue loss as such. It appears to be a case of short levy of Rs. 95,000/- payable by PLA for the month of June 2005. Under these circumstances, the order of the Commissioner permitting the respondent to pay the duty from the Cenvat account cannot be held unreasonable.

5. As already noteds the matter is before the Tribunal for the second time, having been remanded by final order No. 486/2008-SM (BR) dated 5.3.2008 in Appeal No.735 of 2006-SM. The Department persists in following an insignificant issue for the second time before the Tribunal.

6. Appeal is rejected.

(M. Veeraiyan)
Member (Technical)

Pant