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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/2253/2008 – SM[BR]   Date 22/09/2010

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

To :
M/S GOEL TEMPO PVT. LTD.
188, HAPUR ROAD, GHAZIABAD.

M/S GOEL TEMPO PVT. LTD.   Appellant
Vs
C.C.E. GHAZIABAD   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1001 / 2010- **SM[BR]** dated 8.9.2010 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. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD

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. 2253 of 2008-SM (BR)

[Arising out of Order-in-Appeal No. 160/CE/GZB/2008 dated 31.07.2008 passed by the Commissioner (Appeals) Central Excise, Ghaziabad]

Date of Hearing/ Decision: 08.09.2010

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

M/s Goel Tempo Pvt. Limited ...Appellant

Vs.

CCE, Ghaziabad ....Respondent

Appearance: Sh. Rajesh Chhibber, Advocate appeared for the appellant.
Shri Anil Khanna, SDR appeared for the respondent.

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

Final Oral Order No. 1001/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal by the party against the order of the Commissioner (Appeals) No. 160/CE/GZB/2008 dated 31.07.2008.

2. Heard both sides.

3. The appellants defaulted in payment of duty due to be paid for the months of December 2006, January 2007, February 2007 and March 2007. The show cause notice dated 07.06.2007 was issued demanding duty alongwith interest and proposing penalty under Rule 25. Meanwhile they paid the entire duty amount alongwith interest in August 2007. The original authority confirmed the demand of duty alongwith interest and appropriated the said amounts already paid. In addition, he imposed a penalty of Rs. 468723/- under Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals), on appeal by the party reduced the penalty to Rs.1 lakh on the ground that there is no malafide on the part of the appellant to evade the duty.

4.1 Learned Advocate submits that the appellant faced financial crises and the clearances were duly accounted and the defaulted duty and interest stand paid. There is no violation attracting penal provision of Rule 25. At the most the penalty under Rule 27 is only justified.

4.2 Learned Advocate also submits that since the goods have been cleared under invoices and returns were submitted, there is no question of violations attracting Rule 25(1)(a) of the Central Excise Rules. He submits that at the most the violation attract penalty under Rule 27.

5. Learned SDR submits that there has been default in payment for several months and Commissioner (Appeals) has shown leniency. He seeks upholding the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides and perused the records. It is not in dispute that there has been default in payment of duty for four months ~~consequently~~. The same have been paid in August 2007 alongwith interest. This is not a case of unaccounted clearances. At the same time, having cleared the goods, and filed the returns, the appellants were required to pay the duty on the due dates failing which the removals were treated as deemed non duty paid clearances. There have been violations by way of default in payment of duty in respect of four months i.e. December 2006, January 2007, February 2007 and March, 2007. Every such default requires to be viewed as separate violation warranting penalty in terms of Rule 27 of the Central Excise Rules, 2002. The submissions that there was no intention on the part of the appellants to evade duty has to be accepted as rightly held by the Commissioner (Appeals).

7. Taking the entire facts and circumstances into account, the penalty of Rs. 1 lakh sustained by the Commissioner (Appeals) is modified and reduced to Rs. 20,000/- (@ Rs. 5,000/- per each default of monthly payment) under Rule 27 of the Central Excise Rules.

8. The appeal is disposed of as above.

(M. Veeraiyan)
Member (Technical)

Pant