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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/2077/2008 – SM[BR] Date 23/09/2010

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S AVERY CYCLES INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1004 / 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
   M/S AVERY CYCLES INDUSTRIES LTD.
   G.T.ROAD, DHANDARI KALAN, LUDHIANA (PB.)
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. 2077 of 2008-SM (BR)

[Arising out of Order-in-Appeal No. 179/CE/APPL/LDH/2008 dated 30.06.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh]

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

CCE, Ludhiana ...Appellant

Vs.

M/s Avery Cycles Industries Ltd. ....Respondent

Appearance: Sh. Anil Khanna, SDR appeared for the appellant.
None for the respondent.

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

Final Oral Order No....1004/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the department, on the direction of Committee of Commissioners against the order of the Commissioner (Appeals) setting aside the penalty of Rs. 8,000/- imposed by the original authority on the ground that cenvat credit has been wrongly taken by the respondent on the basis of TR-6 challan and not on the basis of invoices.

2. The respondent, as recipient of GTA services, also availed the credit of service tax paid by them based on TR-6 challan.

3. The respondent has apparently not contested the demand of duty in their appeal before the Commissioner (Appeals). Vacating the penalty by the Commissioner (Appeals) is fully justified.

4. The appeal has been filed mechanically without taking the relevant facts into account.

5. Appeal is, therefore, rejected.

(M. Veeraiyan)
Member (Technical)

/Pant/