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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/3 /2009 – SM[BR] Date 23/09/2010

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

To-:
M/S LIBERTY SHOES LTD.,

LIBERTY PURAM, G.T.ROAD, KUTAIL, KARNAL.
(HARYANA)

M/S LIBERTY SHOES LTD., Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1027 / 2010-SM[BR] dated 14.9.2010 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. DELHI III
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
   MR.VERMA KANT & ASSOCIATES
   704,NILGIRI APARTMENT,9,BARAKHAMBA ROAD,N.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
NEW DELHI
Court No.IV

E/Appeal No.3/2009-SM

(Arising out of order in appeal No.220/ANS/PCK/08 dated 7.10.2008 passed by the Commissioner of Central Excise (Appeals), Delhi-III)

Date of Hearing:14.9.2010

For approval and signature:

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

1. Whether Press Reporters may be allowed to see Under 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

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M/s Liberty Shoes Ltd — Appellants

Vs

CCE, Delhi-III — Respondent

Appeared for the Appellant: Shri M.M. Gulati, Rep.
Appeared for the Respondent: Shri R.K. Gupta, SDR

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

Final ORDER 1027/2010 SM (BR)

Per M. Veeraiyan:

This appeal is against the order of the Commissioner (Appeals) dated 7.10.2008.

2. Heard both sides.

3. The original authority disallowed part of the Cenvat credit in respect of inputs received from a 100% EOU holding that the supplier unit has paid duty in excess. Accordingly, he demanded differential duty of Rs. 5,97,634/- alongwith interest and imposed equal amount as penalty. The order of the original authority stands upheld by the Commissioner (Appeals).

4. The supplier of inputs is a 100% EOU falling within the jurisdiction of Commissioner, Noida. The present appellant who is recipient of the input is coming under the jurisdiction of Commissioner Panchkula. As recipient of inputs, the appellants have no jurisdiction or right or power to question the rate of duty or valuation adopted by the supplier of the inputs. The officer incharge of recipient unit cannot be allowed to sit in judgement over the assessment made by the supplier of the unit and the same is within the jurisdiction and power of the jurisdictional Central Excise officers incharge of the supplier unit.

5. It is not in dispute that the appellants have taken credit on eligible duties which stand paid by the supplier unit. Under these circumstances, as settled by various decisions of the Tribunal and as in the case of Jupiter Remedies Pvt Ltd, M/s Advance Remedies Pvt Ltd Vs. CCE Vapi and vice versa reported in 2009-TIOL-186-CESTAT-AHM,

the credit cannot be varied at recipient's end on the ground that the supplier paid excess duty than required to be paid.

6. The orders of the lower authorities are set aside and the appeal is allowed with consequential relief as per law.

(M. VEERAIYAN)
Technical Member

MPS*