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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/71 /2009 – SM[BR] Date 24/09/2010

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

To :
M/S VISHNU CHEMICALS LTD.
PLOT NO. 18-26, INDUSTRIAL ESTATE, NANDINI ROAD, BHILAI-490026. (C.G.)

M/S VISHNU CHEMICALS LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1040 / 2010-SM[BR] dated 17.9.2010 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. RAIPUR

   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult SHRI A.JAJU ADV.
   M/S APPELLANT:---------------

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-III

Date of hearing: **17.9.2010**

Excise Appeal No. 71 of 2009-SM

[Arising out of Order-in-Original No. COMMISSIONER/RPR/96/2008 dated 11.11.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

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 Vishnu Chemicals Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance:

Appeared for the Appellant - Shri A. Jaju, Advocate
Appeared for the Respondent - Shri Anil Khanna, SDR

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

Final Order No. 1040/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. Commissioner/RPR/96/2008 dated 11.11.2008.

2. Heard both sides.

3. The appellant defaulted in part payment of duty for the month of March 2008 and the duty which was not paid was subsequently paid in June 2008 along with interest. The original authority, in pursuance to Show Cause Notice dated 9th September, 2008 imposed penalty of Rs.1,85,000/- under Rule 25(1)(a) read with Rule 8 (3A) of Central Excise Rules, 2002.

4. Ld. Advocate for the appellant submits that due to serious financial crises faced by them, they paid substantial amount of duty through Cenvat credit account and the balance could not be paid by 31st March 2008 and they paid the balance amount along with interest of Rs.1,85,000/- in June 2008. As the goods were clearly accounted and substantial amount of duty involved was paid, the clearances should not be treated as clandestine removal and, therefore, he seeks setting aside the penalty. Alternatively, he submits that the penalty that could be imposed is only Rs.5,000/- in terms of Rule 27 of the Central Excise Rules, 2002. In this regard, he relies on the decisions of the Tribunal in the case of **Condor Power Products P. Ltd. Vs. CCE** reported in 2007 (210) ELT 137 and the decision in the case of **Saurashtra Cement Ltd. Vs. CCE** reported in 2008 (225) ELT 395.

5. Ld. SDR reiterates the findings of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. As the goods cleared were accounted, and the default is only part of the duty amount involved, in the light of the decision of the Tribunal

in the case of **Saurashtra Cement Ltd.**, the penalty of Rs. 1.00 lakh imposed under Rule 25(1)(a) is modified as penalty under Rule 27 and reduced to Rs.5000/-. The appeal is disposed of as indicated above.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM