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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/163 /2005,482 /2005,541 /2005 - EX[DB] WITH E/CO/74/2005-EX

Date 17/08/2010

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

To :
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.

C.C.E. MEERUT I — Appellant

Vs

M/S SIMARAN CHEMICALS PVT.LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 616-618/ 2010 EX[DB]** dated 13-8-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S SIMARAN CHEMICALS PVT.LTD.
   VILL-JATPURA, P.O. CHHUTMALPUR DISTT.SAHARANPUR
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)

3 C.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
(Excise Appeal Branch)

16. SHRI SURAJ PAL SINGH, DIRECTOR
M/S SIMRAN CHEMICALS PVT.LTD.
VILL-JATPURA P.O.CHUTMALPUR,SAHARANPUR

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing: **12.8.2010**

Excise Appeal No. 163 of 2005 with CO/74/2005 and Excise Appeal No. 482 of 2005 & 541 of 2005

[Arising out of Order-in-Appeal No. 614/CE/MRT-I/2004 dated 18.10.2004 passed by the Commissioner (Appeals), Central Excise, Meerut-I]

For approval and signature:

Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

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, Meerut-I — Appellant

Vs.

M/s Simaran Chemicals (P) Ltd.
Shri Suraj Pal Singh, Director — Respondent

Appearance:

Appeared for the Appellant - Shri Alok Arora, Advocate
Appeared for the Respondent - Shri V. Chaudhary, DR

Coram: Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

FINAL Order No. 616 - 618 / 10 - EX

Per Dr. Chittaranjan Satapathy :

Heard both sides.

2. Ld. Advocate appearing for the appellant-assessee states that the appellants have been denied lower duty rate available under the Small Scale Exemption Scheme for the impugned goods to which they are eligible in view of the fact that they aggregate clearance is within the prescribed limit. He is not pressing other points raised in the appeal.

3. We have heard the ld. DR who states that since the impugned goods were cleared clandestinely, the exempted rate is not applicable for such goods.

4. After hearing both sides and having examined the rival contentions, we are of the view that applicable exempted duty rate in respect of the impugned goods has to be allowed for the impugned goods if the appellants are otherwise eligible for Small Scale Exemption Scheme. However, they are liable to penal action separately for contravention of the rules for having cleared the impugned goods clandestinely without following the laid down procedure.

5. For the limited purpose of quantifying the duty amount and re-determining the penalty amount, the matter is remanded to the original authority for fresh decision.

6. As regards the department's appeal, the same is directed against reduction of the penalty by the lower Appellate Authority. After hearing both sides on this aspect, we find that the lower Appellate Authority has reduced the penalty amount taking into consideration the fact that part of the duty amount was paid before issue of the show cause notice. This ground for reduction in the

penalty does not survive in view of the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Dharmendra Textile Processors** reported in 2008 (231) ELT 3 (SC). However, in respect of payments made within one month of issue of the order by the original authority, the appellants were required to be given an option to pay 25% of the penalty amount in terms of Section 11AC of the Act keeping in view of the decision of Hon'ble Delhi High Court in the case of **K.P. Pouches (P) Ltd. Vs. UOI** reported in 2008 (228) ELT 31. Accordingly, we direct the original authority to re-determine the penalty amount while passing a fresh order after taking into account the cited decisions of the Hon'ble Supreme Court and Hon'ble High Court.

7. Both the appeals filed by the assessee-appellant and the department are allowed by way of remand in the above terms. The appeal filed by the Director of the Company Shri Suraj Pal Singh is dismissed as we find that the penalty imposed on him requires no reduction. Cross-objection also stands disposed of.

(Dictated & pronounced in open Court)

(Dr. Chittaranjan Satapathy)
Member (Technical)

(D.N. Panda)
Member (Judicial)

RM