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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/524 /2006 - EX[DB] Date 21/09/2010

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant
Vs
BIRLA VXL, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 646/ 2010 **EX[DB]** dated 17-9-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
BIRLA VXL,
G.T. ROAD, AMRITSAR.
2. Adv. / Consult SH. R. SUDHINDER, ADV.,
C-179, BASEMENT,
DAYANAND COLONY,
LAJPAT NAGAR-IV, N. DELHI-24
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 09.09.10
Date of decision: 09.09.10

Excise Appeal No.524 of 2006-Excise Branch

[Arising out of Order-in-Appeal No.408/CE/Jal/2005 dated 17.11.2005 passed by the Commissioner of Central Excise (Appeals-II), Chandigarh].

For approval and signature:

Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

CCE, Jalandhar — Appellant

Vs.

M/s. Birla VXL — Respondent

Appearance: Rep. by none on behalf of the appellants.
Rep. by Shri Nitin Anand, DR on behalf of the respondent/Department.

CORAM: **Hon'ble Shri D.N. Panda, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No...64 6/10-EX.../Dated

Per D.N. Panda:

In the morning, on behalf of the appellant, there was mention of this matter for adjournment and an application for adjournment came up under health ground of Advocate. When we perused the records, we find that the matter is rolling on the Board from 23.02.2006 when an order for production of certain documents before the Tribunal was passed. Every time thereafter, on some pretext or other, adjournments are taken.

2. An insignificant amount being involved in this Appeal, we do not propose to keep the matter pending granting adjournments repeatedly. It appears from the order sheet that the Respondent is not conscious of pursuing remedy while Revenue is causing appearance every time without seeking adjournments. Therefore, we decline to adjourn this matter further. Accordingly, we proceed to dispose of the appeal on merits.

3. A short point involved in this Appeal is whether there shall be presumption of passing of duty burden by assessee and whether the Assessee has discharged its burden of proof to negate such presumption. First we carried a view to dismiss this appeal for the negligible amount involved in this Appeal preferred by Revenue. But when we noticed that this dispute is in second round of litigation before the Tribunal, we noticed that inspite of opportunity to lead evidence in respect of rebuttal of presumption was granted by Tribunal, Assessee failed to adduce the same before the learned Adjudicating Authority. Ld. Adjudicating

Authority has categorically brought out that noticee had failed to provide copies of invoices for drawing proper conclusion. This shows that the Respondent is not conscious of its right for which Revenue should succeed in this Appeal. Accordingly, we allow Revenue's appeal.

(D.N. Panda)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.