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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/3049/2010 – SM[BR] E/ STAY / 2824 / 2010-SM[BR] Date 01/12/2010

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

To :
M/S VACMET INDIA LIMITED (UNIT-II),
FORMERLY KNOWN AS VACMET PACKAGINGS
(INDIA) PVT. LTD. UNIT-II, A-4/1, UPSIDC
INDUSTRIAL AREA, KOTWAN
M/S VACMET INDIA LIMITED (UNIT-II), Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1316/2010-SM[BR]&S/590/2010 dated 15.11.2010 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.ANIL SINGH SISODIA, ADVOCATE,
   B-35, PRATAP NAGAR, AGRA-282010
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, COURT NO. III

Excise Appeal No. 3049 of 2010-SM(BR)
Excise Stay Application No. 2824 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 181-ST/LKO/ 2010 dated 27.7.2010 passed by the Commissioner of Central Excise (Appeals), Lucknow.]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
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

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M/s. Vacmet India Ltd. Appellants

Vs.

Commissioner of Central Excise
Lucknow Respondent

Appearance:

Shri Siddharth Garg, Advocate for the Appellants
Shri S.K. Bhaskar, JDR for the Respondent

Date of Hearing/decision : 15.11.2010

Final **ORAL ORDER NO. 1316/2010 SM(BR) & S-590/2010 SM(BR)**

Per M. Veeraiyan

Heard both sides for a while on the stay application.

2. The appellant has been denied Cenvat credit by original authority in pursuance of proceedings initiated on show cause notice dated 19.2.09. The original authority also imposed penalty of equal amount. Commissioner (Appeals) has upheld the order of the original authority. It is seen from the records that the Commissioner (Appeals) has granted opportunity of personal hearing on 19.7.10 but none appeared before him and that they also did not request for any adjournment.

3. Learned advocate for the appellant submits that as per the appeal memo, they have deposited an amount of Rs.75,590/- towards duty and Rs.75,590/- towards penalty as against the demand of Rs.3,02,359/- and penalty of equal amount. He also submits that subsequently, on 30.9.2010, after filing of appeal, they have paid the balance amount of duty. In view of the above, pre-deposit is waived and the appeal itself is taken up for final disposal.

4. It is noticed that the impugned order has been passed without hearing the appellants and the appellants have raised various defence submissions before the Tribunal. Considering the nature of the dispute, I deem it appropriate that the matter is remitted back to the Commissioner (Appeals) for fresh consideration after granting reasonable opportunity of hearing to the appellants.

5. To enable the same, I set aside the impugned order of the Commissioner (Appeals) and remand the matter to the Commissioner (Appeals). All issues are kept open.

6. The appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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