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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/277 /2009 – SM[BR] E/ CO / 75 /2009-SM[BR] Date 07/12/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S BHARAT EXPLOSIVES LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1349 / 2010-SM[BR] dated 23.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S BHARAT EXPLOSIVES LTD.,
   9 KM, LALITPUR JHANSI ROAD, LALITPUR.
2. Adv. / Consult SHRI S.D. GAUR CONSULTANT.
   M/S RESPONDENT:-----------------------

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. IV

Excise Appeal No. 277 of 2009-SM(BR)
Excise Cross Objection No. 75 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 405/CE/APPL/KNP/2008 dated 17.11.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur]

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? : 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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Commissioner of Central Excise Kanpur — Appellants

Vs.

M/s. Bharat Explosives Ltd. — Respondent

Appearance: Shri I. Baig, SDR for the Appellants
Shri S.D. Gaur, Consultant for the Respondent

Date of Hearing/decision : 23.11.2010

Final

ORAL ORDER NO. 1349/2010 SM(BR)

Per M. Veeraiyan:

Heard both sides.

2. The respondent-assessee claims to have received goods which have been cleared on payment of duty for the purpose of remaking, reconditioning, repairing in terms of Rule 16 of the Central Excise Rules, 2002. A show cause notice dated 13.11.2007 was issued alleging that the respondent took Cenvat credit amounting to Rs. 9,66,640/- during the period April, 2004 to December, 2005 irregularly without following the procedure as laid down under the provisions of Rule 16 of Central Excise Rules, 2002. The respondents did not file any reply and also did not attend the personal hearing granted by the original authority on 21.5.08, 27.5.08 and 29.5.08. The original authority confirmed the demand and imposed equal amount as penalty. It appears that before the Commissioner (Appeals), the respondent has produced certain evidence like D-3 declaration and duty paying documents etc. and in view of the above Commissioner (Appeals) has set aside the order of the original authority and allowed the appeal. Hence, the department is in appeal.

3. Learned SDR submits that bringing back duty paid goods under Rule 16 of Central Excise Rules, 2002 is subject to the conditions under the Rule and the notifications issued thereunder. The show cause notice has alleged non-production of relevant documents. The party did not file any reply and also did not appear for personal hearings. Learned SDR also submits that the Commissioner (Appeals) has admitted the fresh evidence and the department did not have the opportunity to verify the authenticity of the documents produced before the Commissioner (Appeals).

4. Learned Consultant for the respondent strongly supports the order of the Commissioner (Appeals).

5. I have carefully considered the submissions from both sides. I find that the appellant has not replied to the notice and did not appear for personal hearing and, therefore, have not produced the evidence in defence before the original authority. Commissioner (Appeals) should have appropriately remanded the matter to the original authority for examining the additional evidence produced before him for the first time or at least got the comments from the original authority as envisaged under Rule 5 of Central Excise (Appeals) Rules, 2001.

6. In view of the above, without expressing any views on the merits of the case, I set aside the order of the Commissioner (Appeals) and that of original authority and remand the matter to the original authority for fresh consideration. The respondent is directed to file written submissions within one month from the date of receipt of this order and thereafter the original authority shall decide the matter afresh after granting reasonable opportunity of hearing to the respondents. The respondents shall co-operate in the adjudication proceedings.

7. The appeal is allowed by way of remand.

8. Cross Objection which is merely in support of the order of the Commissioner (Appeals) is also disposed of.

(M. Veeraiyan)
Member(Technical)

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