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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/290 /2005 - EX[DB] Date **02/05/2011**

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

To :
M/S SAMARIA PROCESSION CO.
21/C, SECTOR-C SANWER ROAD, INDORE

M/S SAMARIA PROCESSION CO. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.374/ 2011 EX[DB]** Dated 20-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.PRADEEP ASAWA
445-46,VIKRAM TOWER,3 RD FLOOR,SAPNA SANGEETA ROAD,INDORE

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT,

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:20.4.2011

Central Excise Appeal No.290 of 2005

[Arising out of order in appeal No.IND-I/415/2004 dated 28.10.2004 passed by Commissioner, Central Excise (Appeals-I), Indore.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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?	Yes

Samria Processing Co. .... Appellant

Vs.

C.C.E., Indore .... Respondent

Appearance:

None for the appellants
Shri Sunil Kumar, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 374 / 2011-EX

Per Shri Justice R.M.S. Khandeparkar:

None present for the appellants and the DR for the respondent. This appeal arises from the order dated 20.10.2004 passed by the Commissioner (Appeals), Indore. The grievance of the appellants relates to refusal on the part of the Commissioner (Appeals) to deal with the appellant's grievance relating to the final fixation of the production capacity by the lower authority relating to the period from 1.9.99 to 29.2.2000 and from 1.4.2000 onwards on the assumption that the appellants had no dispute regarding such fixation of the production capacity during the said period.

2. We have heard the DR and we have perused the records with the assistance of the DR. Undoubtedly, the Commissioner (Appeals) had observed in the impugned order that the appellants had no dispute regarding final fixation of the production capacity relating to the period 01.09.99 to 29.02.2000 and 01.04.2000 onwards. However, perusal of the written submissions which were filed by the appellants before the Commissioner (Appeals) pursuant to the remand matter of the Tribunal clearly reads thus –

> ***" There is no dispute about the fixation of capacity w.e.f. 1.4.2000 (i.e. S.No.3 above). Now while fixing the capacity for the period 26.5.99 to 31.8.99 and 1.9.99 to 31.3.2000, the learned officer on one side included the length of galleries and on other side ot included the length of cylinder rail w.e.f. 06.03.2000 from which date the cylinder has become non functional and completely dismantled."***

3. Apparently, the appellants did have grievance about such fixation of the production capacity for the concerned period i.e. for the period from 1.9.99 to 29.2.2000 as well as for the period 1.4.2000 onwards. The finding of the Commissioner (Appeals) is to the effect that the appellants had no dispute relating to the said period is not born out from the records. Being so, the same is not maintainable and is liable to be set aside and the matter remanded to the Commissioner (Appeals) to decide the grievance of the appellants in relation to the said period. Accordingly, appeal succeeds on the above limited ground. The impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide the grievance of the appellants relating to the period in question in accordance with the provisions of law. Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

Rakesh Kumar)
Technical Member