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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/2366/2005-EX[DB]

Dated: **12/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
BHARTIYA INDUSTRIES LTD.
20/4, MATHURA ROAD , FARIDABAD

BHARTIYA INDUSTRIES LTD. (Appellant)

VS

C.C.E. DELHI IV (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1213/2012-EX[DB]** dated **19/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
C.C.E. DELHI IV
New CGO Complex, NH-IV, Faridabad,
Haryana 121001.

2. **Advocate(s) / Consultant(s):** SH. HEMANT BAJAJ, ADV, C/O R. C. GUPTA, 215, THAPAR CHAMBERS, OPP. MAHARANI BAGH RING ROAD, N. DELHI-14

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

Date of Hearing/ Decision:19.09.2012

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	

Excise Appeal No.E/2366 of 2005

(Arising out of Order-in-Appeal No.12/13/CE/APPL/DLH-IV/2005 dated 24.02.2005 of the Commissioner of Central Excise (Appeals), New Delhi).

M/s.Bhartiya Industries Ltd. ...Appellants

Vs.

CCE, Delhi-IV ...Respondent

Appearance: Shri Hemant Bajaj, Advocate for the appellant.
Shri I.Baig, DR for the respondent.

Coram: Hon'ble Justice Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL ORDER NO. A/1213/2012-EX(BR)

Per Rakesh Kumar:

The appellant are manufacturers of electric control panels, switchgear and parts chargeable to central excise duty. The period of dispute in this case is from August, 1995 to December, 1995 and April, 1996 to April, 1996. The allegation against the appellant is that during their period, they manufactured and cleared the electric connectors and parts thereof and parts of windmill by availing full duty exemption under notification no.205/88-CE dated 25.5.1988. The department was of the view that the exemption under this exemption is not available to the appellant. Accordingly, the jurisdictional Asstt. Commissioner vide order –in-original dated 15.12.1999 confirmed the duty demand of Rs.8,63,937/- and also imposed penalty of Rs.87,000/-. On appeal to the Commissioner (Appeals), this order of the Asstt. Commissioner was upheld except for extending the cum-duty benefit and the adjustment of the duty which had already been paid. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. At the outset, Shri Hemant Bajaj, the learned Counsel for the Appellant has submitted that the issue involved in this appeal has been decided against the appellant by the Supreme Court in the case of **NICCO CORPORATION LTD. VS.CCE, CALCUTTA - 2006 (203) ELT 362 (SC)** and as such the appellant does not press the appeal insofar as the merits of the case are concerned. Ld. Counsel confined his submission only to the quantum of the penalty imposed on

the appellant. He pleaded that during the period of dispute there were conflicting judgements on the issue involved till the matter was set aside by the Hon'ble Supreme Court in the case of **Nicco Corporation Ltd. (supra).** He, therefore, pleaded in the circumstances of the case the penalty of Rs.87,000/- was not justified as there was no intention to evade the excise duty.

4. Shri I. Baig, ld. DR pleaded that in this case the appellant deliberately mis-used the benefit of notification no.205/88-CE by classifying the goods manufactured by them as parts of the windmill while the goods were correctly classifiable under Heading 8536.90 and that, in view of this, penalty of Rs.87,000/- is justified and there is no justification for waiving the penalty.

5. We have considered the rival submissions.

6. We are of the view that looking to the nature of the contravention, some penalty is justified. The penalty imposed is only 10% of the duty demand. As such, the same is moderate. In view of this, we do not find any merit in this appeal. The appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.