FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 18/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70498/2017-EX[DB] dated 08/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1144/2010	C.C.E, GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
		Name and Address of Respondent
2		RATHI INDUSTRIES LTD. Chapraula, Bulandshahr Road, Gautam Budh Nagar (UP),,

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

11 The ICFAI society, 52. Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/1144/2010-EX[DB]

(Arising out of Order-in-Original No. 62/COMMISSIONER/GZB/2009 dated 24/12/2009 passed by Commissioner of Central Excise & Customs, Ghaziabad)

Commissioner of Central Excise, Ghaziabad — **Appellant**

Vs.

M/s Rathi Industries Ltd. — **Respondent**

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR). — for Appellant
Shri Rajesh Chhibber, Advocate. — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/05/2017
Date of Decision : 08/05/2017

FINAL ORDER NO.-70428/2017.......

Per: Anil Choudhary

The present appeal is filed by the Revenue against Order-in-Original No. 62/COMMISSIONER/GZB/2009 dated 24/12/2009 passed by Commissioner of Central Excise & Customs, Ghaziabad.

2. Revenue is in appeal, on the ground that in computing the period of limitation for the extended period, the learned Commissioner have erred in passing the impugned order and the demand of duty relating to the period 1st October, 2003 to

23rd October, 2003 has been dropped erroneously which will fall within the limitation period.

3. Heard the parties.

4. The admitted facts are the show cause notice dated 24th October, 2008 was issued invoking the extended period, for the period 1st April, 2002 to 31st March, 2005. The respondent-assessee had challenged the show cause notice in Writ Tax No. 1969/2009 before the Hon'ble Allahabad High Court, wherein vide Final Order dated 7th December, 2009 the Hon'ble High Court have observed as follows:-

> "We have given careful consideration to the respective submissions of the learned counsel for the parties and prima facie are satisfied that part of the period of show cause notice is barred by time. The period under notice is 1st of April, 2002 to 31st of March, 2005.
>
> Taking the argument of the learned senior counsel on its face value, the said notice would be barred by time maximum for the period of 1st April, 2002 to 24th October, 2003. For the rest, the notice is not barred by time.
>
> In view of the above, we provide that the proceedings may go on before the authority concerned and the authority concerned shall adjudicate the question of limitation on merit uninfluenced by the order of this Court. It is further provided that the authority concerned while passing the final order shall bifurcate the period-One for 1st of April, 2002 to 24th of October, 2003 and the another for rest of the period."

5. From the aforementioned order of the Hon'ble Allahabad High Court it is evident that the Hon'ble High Court declared the period 1st April, 2002 to 24th October, 2003 as time barred and for the rest of the period held that the notice was not barred by time. Following the same, the learned

Am

Commissioner, Ghaziabad vide the impugned order, he dropped the demand with respect to the period 1st April, 2002 to 23rd October, 2003. We find that there is no error or in propriety in counting of period by the learned Commissioner, in following the order of Hon'ble High Court.

6. We further find that the grounds of appeal filed by revenue are hit by 'doctrine of Merger' and also the 'doctrine of Hierarchy of Courts'. In this view of the matter, we find there is no merit in the appeal of revenue and the same is dismissed. The respondent-assessee shall be entitled for consequential relief, if any, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

ukp

प्रमाणित प्रति/Cerified True Copy
23/05/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001