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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/2154/2007  
E/S/1799/07 IN

Date 28/09/2007

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

To: AVI ENTERPRISES  
VIKRAM ANAND, PROP. AVI ENTERPRISES  
G-48, MANSAROVAR GARDEN, NEW DELHI  
110015

VIKRAM ANAND, PROP. AVI ENTERPRISES

Appellant

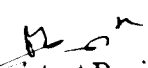
Vs

C.C.E. DELHI III

Respondent

STAY ORDER NO. 979/07-EX.

I am directed to transmit herewith a certified copy of Final order No. 497/07-EX. dated 20-9-07  
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. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,  
PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

3. C.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

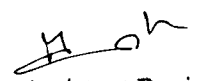
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block-II, R.K. Puram, Principal Bench, New Delhi**  
 Court No. I

**Excise Appeal No. 2154 of 2007 with Excise Stay Application No. 1799 of 2007**

[Arising out of Order-in-Appeal No. 195/SSS/RTK/2007 dated 28.3.2007 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaonn].

DATE OF HEARING/DECISION : 20.09.2007

**FOR APPROVAL AND SIGNATURE :**

HON'BLE MR. JUSTICE R.K. ABICHANDANI, PRESIDENT  
 HON'BLE DR. T.V. SAIRAM, MEMBER (TECHNICAL)

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

**AVI Enterprises**

**...Appellant**  
(Rep by Mr. Vikram Anand, Prop.)

Versus

**CCE, Delhi-III**

**...Respondent**  
(Rep by Mr. C. S. Rajput, DR)

**CORAM : HON'BLE MR. JUSTICE R.K. ABICHANDANI, PRESIDENT**  
**HON'BLE DR. T.V. SAIRAM, MEMBER (TECHNICAL)**

Final ORDER NO. 497/2007 EX

STAY ORDER No. 979/2007 EX

**PER Mr. Justice R.K. Abichandani**

Heard both the sides. Having regard to the short issue involved, which relates to not depositing the amount under Section 35F of the Central Excise Act, 1944, the appeal itself is taken up for final hearing at the instance of both the sides, by waiving the requirement of pre-deposit.

2. The appellant has challenged the order of the Commissioner (Appeals) made on 29.03.2007 dismissing the appeal for non-compliance of the provisions of Section 35F of the Act. It appears that an interim order was made by the Commissioner (Appeals) on 15.12.2006 requiring the appellant to make a pre-deposit of Rs. 15 lacs by 08.01.2007 and report compliance by 12.01.2007. Thereafter, by order dated 05.01.2007, the Commissioner (Appeals) modified the interim order reducing the pre-deposit amount to Rs. 7,50,000/-, with a direction to make the deposit by 22.01.2007 and report compliance by 25.01.2007. Since the amount was not deposited, the appeal has been dismissed by the impugned order.

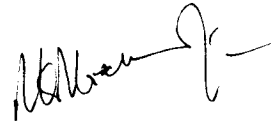
3. The appellant, who was the sole proprietor of M/s AVI Enterprises, has argued the matter himself contending that earlier the Commissioner (Appeals) had remanded the matter on 10.06.2005. In that order, the Commissioner (Appeals) took note of the fact that after extraction of the finer quality of scrap, the remaining scrap would remain "processed scrap" but of poor quality. Since the relevant contentions on this aspect were not considered earlier by the adjudicating authority, the appellate Commissioner remanded the matters for a fresh consideration.

4. Thereafter, the Additional Commissioner, who decided the matter on 30.10.2006, held that there was a mis-declaration of the value of the scrap removed after the process of the scrap imported because the scrap was sold for the value, which was below the average import value of the imported scrap.

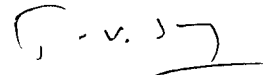
5. It prima-facie appears from the record that the appellant had imported metal scrap containing zinc. The appellant was 100% EOU established for the manufacture and export of copper alloy zinc and articles thereof. The appellant was allowed to sell its product including scrap in the DTA in accordance with the permission granted by the Development Commissioner. It is the case of the appellant that the metal scrap, which was imported, was processed by the appellant, as a result of which zinc ingots were manufactured, which were

exported and sold as per the permission to sell, in the domestic market, on which duty was paid. As a result of this process, certain quantity of scrap was treated as by-product and dutiable under the same tariff item No. 7902 as "zinc waste and scrap". It is submitted that the value of the remaining scrap, which was the result of the process of the imported scrap, could not have been higher than the value of the imported scrap. It prima-facie appears that the value of the zinc waste and scrap, which remained after the imported metal scrap was processed and most of the zinc was taken out and manufactured into zinc ingots, cannot be higher than the value of the imported metal scrap. The impugned order cannot, therefore, be sustained and is hereby set-aside with a direction to the Commissioner (Appeals) to hear and decide the appeal on merits, which stands restored to the file with the Commissioner (Appeals). The matter was once remanded by the Commissioner (Appeals) and it is already delayed. It is therefore expected of the Commissioner (Appeals) to dispose of the appeal expeditiously. The appeal is, accordingly, allowed by way of remand. The stay application does not survive and stands disposed of.

(Dictated & pronounced in the open court)



**(JUSTICE R.K. ABICHANDANI)**  
**PRESIDENT**



**(DR. T.V. SAIRAM)**  
**MEMBER (TECHNICAL)**

[Pant]