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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/3022/2007,3024/2007-3026/2007 Date 07/03/2008
E/S/2704 & 2707-2709/07

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

To: 3. SH. VIKAS CHANDRA (MD) 4. SH. H. GONDI (CFO/CS)
1. SH.K.K.BHAGAT(EX VP MARKETING)
2. M/S SCHENCK ROTC INDIA LTD. A-5, SECTOR 81,
PHASE II, NOIDA 201305 (UP)

SH.K.K.BHAGAT(EX VP MARKETING) Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of Final order No. 72-75/08 STAY ORDER NO. 200-203/08 Excise dated 18-2-08

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. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.ER Y KUMAR
   H. NO.20, SECTOR-46 FARIDABAD-121003
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 Publictions (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 AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI, COURT NO.1

EXCISE STAY APPLICATION NOS. 2704 & 2707 TO 2709 OF 2007 IN
APPEAL NOS.3022 & 3024-3026 OF 2007

[Arising out of order-in-appeal No.79-82-CE/Noida/2007 dated 30.7.2007 passed by the Commissioner of Central Excise & Customs (Appeals), Noida]

Date of Hearing/Decision: 18.2.2008

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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.	:	No
2. Whether it should be released under Rule 27 of the 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

M/s. Sckhenck Ro Tec India Limited — Applicant
Shri K.K. Bhagat — [Rep. by: Mr. Y.K. Kumar, Advocate]
Shri Vikas Chandra
Shri H. Gondi

Versus

CCE, Noida — Respondent
[Rep. Mr. V.K. Agrawal, Authorized Representative(DR)]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No. 72 to 75/08
Stay Order No 200 to 203/08

Per M. Veeraiyan (For the Bench):

After hearing both sides for a while on the stay petition, we felt that the matter could be finally disposed off and accordingly waive pre-deposit of the amounts and proceed to dispose of the appeals, all of which arise out of a common order.

2. The appellant, a manufacturer of various machineries, has, in some cases, admittedly resorted to splitting the invoice value by showing part of the value as erection and commissioning charges and thus reducing the assessable value of the machineries supplied. The department has taken all cases where commissioning and erection charges have been collected by them as cases of splitting of invoices. The learned advocate for the appellant admitted that they have resorted to this method only in certain cases but the presumption by the department that the same has been done in all cases was wrong. This is a matter requiring detailed verification of facts at the original level.

3. Therefore, we set aside the order of the Commissioner (Appeals) and remand the matter to the original authority for de novo consideration. The appellant is directed to produce evidence in support of their claim within two months from the date of receipt of this order and the original authority shall decide the matter expeditiously but within two months thereafter. The appellant shall be given a reasonable opportunity of hearing.

4. The appeals are, therefore, allowed by way of remand.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

[M. Veeraiyan]
Member (Technical)

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