2

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/511 /2008 &E/S/587/2008 Date 30/04/2008

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

To :
M/S RANA PAPERS LTD.
8TH K.M. JANSATH ROAD,
MUZAFFARNAGAR-251001

M/S RANA PAPERS LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

STAY ORDER NO. 402/08

I am directed to transmit herewith a certified copy of **Final order No.** 200/08 **Excise** dated 17-4-08 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.AALOK ARORA, ADVOCATE
   82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

E/STAY No. 587/2008 IN & EXCISE APPEAL NO. 511 OF 2008

[Arising out of Order-in-Original No. 02/Comm/MRT-I/2008 dated 23.1.2008 passed by the Commissioner, Central Excise, Meerut-I, Meerut]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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 would 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?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Rana Papers Ltd., Appellants

Vs.

CCE, Meerut-I Respondent

Appearance:

Shri Alok Arora, Advocate for the appellants,
Shri H.K.Thakur, Jt.CDR, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 17th April, 2008

FINAL ORDER NO. 200/08-EX dated ________
STAY ORDER NO 452/08-EX

Per S.S. Kang:

Heard both sides.

2. Applicants filed this application for waiver of pre-deposit of duty of Rs. 1, 03, 94, 960/- and penalty of Rs. 5,000/-. In this case the applicants were clearing goods by paying duty under Rule 8 of Central Excise Rules. Case of the Revenue is that for the month of July, 2006 the applicants made default of Rs. 5000/- in respect of Education CESS and the same has not been paid as per the provisions of Rule 8 of the Rules. Default was made good on 13.9.2006. Hence, as per provisions of Rule 8 of Central Excise Rules, during the period of default the applicants were to clear the goods on consignment basis paying duty through current account. As the applicants had paid duty from Cenvat Credit account, therefore, clearances are to be treated as without payment of duty.

3. Contention of the applicants is that there was a default of only Rs. 5000/- in respect of Education Cess. Now the applicants produced invoice-wise payment of duty including Education CESS to submit that up to July, 2006 they have paid Rs. 7478/- in excess to their liability in respect of Education Cess. The applicants submitted that they were

wrongly quantifying the Education Cess by considering basic excise duty and paper Cess whereas applicants are only liable to pay Education Cess after taking into consideration the basic excise duty. In view of this, contention of the applicants is that during the month of July, 2006 there was no short payment Education Cess. Applicants admitted that this fact was not pleaded before the Commissioner, Central Excise during the adjudication proceedings. In these circumstances it cannot be said that applicants defaulted in payment of Education Cess.

4. Contention of the Revenue is that applicants made default in payment of duty on due dates as per Rule 8 of Central Excise Rules. Therefore, they are liable to clear the goods on consignment basis on current account. On the basis of this demand was rightly made.

5. We find that in this case there is a default of Rs. 5000/- towards Education Cess ,Now applicants have produced relevant data showing that they have already paid Rs. 7,000/- in excess in respect of Education Cess up to July, 2006. This contention was not raised before the adjudicating authority. In these circumstances we find that it is a fit case for re-consideration by the adjudication authority. Accordingly, impugned order is set aside after waiving Pre-deposit of duty and penalty. The matter is remanded to the adjudicating authority to decide

afresh after affording opportunity of hearing to the appellants. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 21st April, 2008

RK