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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/4978/2004-4979/04 Date 16/07/2008

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

To :
C.C.E. MEERUT-I
UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT
C.C.E. MEERUT-I Appellant

Vs

M/S RAMAN ISPAT (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**.461-462/2008 **Excise** dated 14-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**
1. Respondent
   M/S RAMAN ISPAT (P) LTD.
   MEERUT ROAD, MUZAFFARNAGAR (U.P.)
2. Adv. / Consult SH. ALOK ARORA, ADV.,
   82, MISSION COMPOUND,
   SAHARANPUR-247001
3. CDR.
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)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI, COURT NO.III

**EXCISE APPEAL NOS. 4978-4979 OF 2004 WITH CROSS OBJECTIONS NOS. 3 and 4 of 2005**

Date of Hearing: 11.7.2008
Date of Decision: 11.7.2008

[Arising out of Order-in-Appeal No. 453 & 454/CE/MRT-I/04 dated 5.7.2004 passed by the Commissioner of Customs and Central Excise (Appeals), Meerut-I]

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**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 |

CCE, Meerut — Appellant
[Rep. by: Shri S. Kumar, DR]

Versus

M/s. Raman Ispat (P) Ltd. — Respondent
[Rep.by:Shri Alok Arora, Advocate]

**Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. M. Veeraiyan, Member (Technical)**

FINAL **ORDER** 461-462/08-SC

**Per Archana Wadhwa:**

Both the appeals filed by the Revenue are being disposed of by a common order as the issue is identical.

2. The respondents are engaged in the manufacture of iron and steel products and during the period prior to 1.4..1998, were paying duty on the APC fixed by the Commissioner. However, with effect from 1.4.1998, they choose to discharge duty liability on the basis of the actual production, under intimation to the Commissioner, The said switching over from payment of duty to payment on actual production stands accepted by the Commissioner with which the Revenue is aggrieved. The Revenue's objection, as taken in their grounds of appeal is that the application filed by the respondents for re-determination of duty liability on the basis of actual production was not decided by the Commissioner and as such they should have continued to discharge their duty liability on the basis of the annual production fixed by the Commissioner. We do not find any merit in the above contention. It is not the Revenue's case that the actual production was shown on the lower side. On the contrary it reflects upon the working of the Revenue that inspite of having applied for re-determination of duty on the basis of the actual production, their application was not decided and rather an appeal was filed on the said ground. The issue on merits that the assessee is entitled to shift their option ~~to~~ in the succeeding financial year stands decided by the Tribunal in the case of 2002(50) RLT 581 (CEGAT) which stands followed in a number of decisions including the judgment in the case of **Simran Metals Vs. CCE, Patna** 2002 (53) RLT 423 (CEGAT-Del.). As such the Revenue's appeal on the ground that they should have waited for the proper order of the Commissioner on their application cannot be allowed. Accordingly, we reject Appeal No.E/4978/04.

4. Appeal No.E/4979/04 is for enhancement of penalty, which stands reduced by the Commissioner (Appeals) to Rs.1,00,000/-. It is the

respondent's case that the matter was not free from doubt during the initial stages of introduction of Annual Capacity of Production Rules and the same was subjudice before various Courts including the Hon'ble Supreme Court. The same was finally settled by the Apex Court in the case of **Venus Castings (P) Ltd.** and **Supreme Steel & General Mills**. In any case for the said period they have gone before the Settlement Commission and the matter was settled vide their order dated 17.6.2004, wherein immunity from penalty was extended to them. In such scenario the learned advocate submits that even part penalty was not required to be imposed by the Commissioner (Appeals). By taking the above factor into consideration, we do not find any justifiable reason to enhance the penalty on the respondent. Accordingly, Appeal No>E/4979/04 also stands rejected.

[Operative part of the order already pronounced in the open Court on 11.7.2008]

14/7/08

[Archana Wadhwa]
Member (Judicial)

14/7/08

[M. Veeraiyan]
Member (Technical)

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