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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/1649/2008 - EX[DB]&E/S/1629/08 Date 14/10/2008

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

To :
M/S SHREE DATAWARES PVT. LTD.
862, PEM, MANDHANA,DISTT. KANPUR (U.P.)

M/S SHREE DATAWARES PVT. LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 746/08 & S.O.NO.1050/08- **EX[DB]** dated 16-9-08

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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   ~~MR.AMIT AWASTHI~~
   1~~43/145, SWARUP NAGAR, KANPUR-208002~~
   SH. BIPIN GARG, ADV.,
   B-1/1289-A, VASANT KUNJ,
   N. DELHI-70
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S SHREE DATAWARE PVT. LTD.~~
~~862, PEM, MANDHANA,KANPUR.~~

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

E/STAY APPLICATION NO. 1629/08 IN AND CENTRAL EXCISE APPEAL NO. 1649 OF 2008

[Arising out of Order-in-Appeal No. 174-CE//2008 dated 30.04.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Shree Datawares (P) Ltd. — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance:
Shri Bipin Garg, Advocate for the appellants;
Shri Surender Shah, Departmental Representative, for the Revenue;

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

Date of Hearing: 16th September, 2008

STAY ORDER NO. 1050/08-EX

FINAL ORDER NO. 746/08-EX **dated** ________

Per S.S. Kang:

Heard both sides. The applicants filed this application for waiver of pre-deposit of duty of Rs. 2,21,897/-. In this case demand was confirmed after denying small scale industries exemption. Contention of the applicants is that after filing this appeal refund ~~sanctioned~~ amount of Rs. (sanctioned to the appellant) 54,395/- was adjusted against this demand vide order dated 26.8.2008.

2. Contention of the applicants is that as per notification SSI exemption is available to the units situated in rural area and manufacturing branded goods. Certificate to the effect that the unit is situated in rural area was produced before the Commissioner (Appeals), however, the Commissioner (Appeals) have not considered the same on the ground that the same is submitted before the adjudicating authority.

3. Contention of the Revenue is that the applicants are manufacturing branded goods. Therefore, demand is rightly made. Certificate now relied upon by the appellants was not produced before the adjudicating authority, therefore, impugned order is rightly passed.

4. We find that the amount of Rs. 54,395/- has already recovered by the Revenue. As the certificate, issued by the Revenue authorities to the effect that the factory premises is in rural area, is not considered by the lower authority, therefore, the amount already adjusted is sufficient for

hearing of the appeal. Pre-deposit of remaining amount of duty is waived. Stay application is allowed.

5. As the certificate produced by the appellants is not considered by the lower authorities, this requires verification, therefore, impugned order is set aside and the matter is remanded back to the adjudicating authority to decide afresh after affording reasonable opportunity of hearing to the appellants. Appeal is disposed of by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 18th September, 2008

RK