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/374 /2007-376 /2007,468 /2007 Date 28/08/2008

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

To :
THE RISHAB VELVELEEN LTD.
9TH KM, DELHI-HARIDWAR HIGHWAY, JAWALPUR,
HARIDWAR
THE RISHAB VELVELEEN LTD. Appellant
Vs
C.C.E. MEERUT-I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 644-647/08-EX **Excise** dated 14-8-08 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
UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT-I
2. Adv. / Consult
MR.P.R.MULLICK 2. SH. R. RAGHAVAN, ADV.,
27 RACE COURSE,DEHRADUN. B-6/10, S.J. E NC., N. DELHI-29
3. &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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 374-376 and 468 of 2007

[Arising out of the Order-in-Original No. 109-119/ Commissioner/Meerut-I/2006 dated 26/10/2006 passed by The Commissioner, Customs & Central Excise, Meerut.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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 Department Authorities? :

M/s The Rishab Velveleen Limited & Ors. Appellant

Versus

CCE, Meerut Respondent

Appearance

S/Shri P.R. Mulick and Ravi Raghavan, Advocates – for the appellant.

Shri H.K. Thakur, Authorized Representative (DR)– for the Respondent.

CORAM : **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 14/08/2008.

Final Order No. 644-647/08-EX. Dated :

Per. S.S. Kang :-

Heard both sides. The appellant filed this appeal against the order passed by Commissioner of Central Excise, whereby benefit of Notification No. 50/03-C was denied on the ground that the part of the factory is not on the specified areas covered as per the Notification and the substantial expansion was not done on or after 07/1/03 as the applicants started the expansion programme prior to 07/1/03, therefore are not entitled for the benefit of Notification.

2. The contention of appellant is that impugned order is passed ex-party. The appellant appeared before Commissioner of Central Excise for personal hearing on 20/9/05, thereafter learned Commissioner was transferred new Commissioner of Central Excise joined. The appellant received notice of hearing in the month of August 2006 and the applicant asked for adjournment on the ground that they are seeking opinion of Indian Institute of Technology regarding specific expansion of their unit and the opinion is awaited. In spite of this, the impugned order was passed

ex-party. Now, the appellant received the opinion of Indian Institute of Technology to the effect that the effective increase in the installed capacity is 33% and increase in the production capacity has been effective September 2003 based. The appellant also submitted that the State Government has clarified that the Khasra number on which the factory is situated are covered under the Notification and to this effect a Notification No. 27/05 dated 19/05/05 was issued and this fact has not taken into consideration while passing the impugned order. In these circumstances, as the appellant undertakes substantial expansion which is not less than 25% of the installed capacity within the stipulated period and the Khasra number on which the factory is situated are specified under notification hence benefit was wrongly denied.

3. Contention of Revenue is that in spite of opportunities granted to the appellant they had not appeared for personal hearing, therefore, the impugned order was passed as per evidence on record. The evidence on record shows that expansion programme started prior to 07/1/03 and some machines were also received in the factory prior to this date. In these circumstances, the impugned order was rightly passed.

4. In this case, the benefit of Notification No. 50/03-C was denied. Applicants claimed the benefit clause Notification No. 50/03-CE which provides that the benefit of Notification shall apply to the industrial units existing before 07/1/03 in the area mentioned in Annexure II of the notification, which have undertaken substantial expansion by way of increase in installed capacity by not less than 25% on or after seven day of January 2003 but have commenced commercial production from such extended capacity not later than 31/03/07. Before the adjudicating authority the applicants asked for adjournment on the ground that they are seeking opinion from the Indian Institute of Technology. The request of adjournment was denied. The opinion from Indian Institute of Technology was received after passing of the impugned order. As per the report of IIT, the effective increase in the installed increase production is 33% and the increase in production capacity has been effective post September 2003. The contention of applicant is also that now the Government has issued a Notification No. 27/05 dated 19/05/05 to the effects that Khasra numbers on which factory has been situated are included in the Annexure II of the Notification. In these circumstances, as the IIT report is received after the passing of the impugned order and the notification including the Khasra number in Annexure II

of the notification are not taken into consideration. In view of this, we find the matter requires re-consideration by the Adjudicating Authority. The impugned order is set aside and the matter is remanded to the Jurisdictional Commissioner of Central Excise to decide afresh after affording an opportunity of hearing to the appellant. Appeals are disposed of by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK