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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

Date 20/05/2009

Appeal No. E/1638/2007 - EX[DB]
E/S/1317/2007-EX
E/M/387/2009-EX

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

To :
M/S CARRIER AIRCONDITIONING AND
REFRIGERATION LTD.
(NOW KNOWN AS CRRIER REFRIGERATIN AND AIR-
CONDITIONING LTD, NARSINGPUR KHERKI DAULA
POST, GURGAON
M/S CARRIER AIRCONDITIONING AND
REFRIGERATION LTD.

Appellant

Vs

C.C.E. DELHI III

Respondent

STAY ORDER NO.424/2009-EX
MISC ORDER NO. 307/2009-EX

I am directed to transmit herewith a certified copy of **Final order No.** 331/2009-EX[DB] dated 29-4-09

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. DELHI III
UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
MR.R. KRISHNAN
297-E, POCKET-II,MAYUR VIHAR PHASE-I, DELHI-110 091.

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18 HON BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Misc. Application No. 387 /2009- Ex(BR)
Excise Stay Application No. 1317 /2007- Ex(BR)
Excise Appeal No. 1638 /2007- Ex(BR)

[Arising out of Order-in-Original No. 09/PP/CE/2007 dated 31.3.2007 passed by Commissioner of Central Excise, Delhi III, Gurgaon]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
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?	:	No

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M/s. Carrier Airconditioning & Refrigeration Ltd. — Appellant

Vs.

Commissioner of Central Excise Delhi III — Respondent

Appearance:

Mr. R. Krishnan, Advocate for the Appellant
Mr. Prabhat Kumar, Special Counsel for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 29.4.2009

MISC ORDER NO. 307/09-EX

FINAL **ORAL ORDER NO.** 331/09-EX

STAY ORDER NO. 424/09-EX

Per Mr. Justice R.M.S. Khandeparkar (for the Bench):

Heard.

2. This matter relates to the order dated 5.4.07 passed by the Commissioner of Central Excise, Delhi III, Gurgaon. Apart from various contentions sought to be raised in the matter, it has been strenuously argued on behalf of the appellant that there was total denial of natural justice to the appellant by the lower authority while disposing of the matter inasmuch as the appellant had no opportunity to file detailed reply to the show cause notice dated 31.3.93 which was issued to the appellant on account of failure on the part of the department to furnish the documents to the appellants which were seized by the department.

3. Considering the nature of controversy, as in our opinion, no purpose would be served by dealing with the matter on merit at appellate stage. More particularly in view of the fact, which is not in dispute, that the appellant had no opportunity of having access to their own documents relevant for the case as these documents remained in the custody of the Department. It goes without saying, therefore, that the appellant could not have been expected to file a detailed reply to show cause notice in the absence of documentary evidence being available to them to put forth their case. In the circumstances, therefore, we waive the requirement of pre-deposit and proceed to dispose of the appeal at this stage itself.

4. Since the appellants were made available copies of relevant documents very recently during the pendency of this appeal, that appellants could not have been expected to prepare their reply to the show cause notice in the absence of such documents.

5. The advocate for the appellant on instructions have also submitted that if the matter is remanded giving opportunity to the appellant to file the reply to the said show cause notice, the appellant would do so by extending all the co-operation on their part to dispose of the matter as expeditiously as possible.

6. In the circumstances, without expressing any opinion on any of the points sought to be raised in relation to the merits of the case, we hereby set aside the impugned order and remand the matter to the Commissioner to dispose of the same de novo after giving opportunity to the appellant of filing the reply to the said show cause notice. The learned advocate for the appellant undertakes to file the reply to the show cause notice within four months from today. The reply to the show cause notice, therefore, should be filed on or before 24.8.2009 without fail before the concerned authority ınd thereupon the authority shall fix the date for further proceedings in the ɑatter. Parties are expected to render necessary co-operation to dispose of

the proceedings as expeditiously as possible. Bearing in mind the fact that the show cause notice was issued in the year 1993, the authority shall dispose of the matter as expeditiously as possible and in any case prior to 31.3.2010.

7. In view of what is stated above, the appeal and application stand disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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