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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/1115/2009-1116/2009 - EX[DB] Date 19/06/2009
E/S/1093-1094/2009-EX

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

To :
M/S RICO AUTO INDS. LTD.

38 K.M.STONE,DELHI-JAIPUR HIGHWAY GURGAON.

M/S RICO AUTO INDS. LTD. Appellant

Vs

C.C.E. DELHI III STAY ORDER NO.502-503/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 406-407/2009- **EX[DB]** dated 15-6-09

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.RAM CHANDER CHOUDHARY,

H.NO. 1610, SECTOR-4, URBAN ESTATE, GURGAON-122001.

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

Assistant Registrar
(Excise Appeal Branch)

~~M/S RICO AUTO INDS. LTD.~~
~~38 K.M. STONE, DELHI-JAIPUR HIGHWAY GURGAON~~

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

Excise Appeal Nos. 1115 & 1116 of 2009
Excise Stay Application Nos. 1093 & 1095 of 2009

[Arising out of Order-in-Appeal No. 35-36/ANS/GGN/2009 dated 5.2.2009 passed by Commissioner (Appeals) Central Excise, Gurgaon]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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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? : 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

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M/s. Rico Auto Industries Ltd. Appellant

Vs.

Commissioner of Central Excise Delhi III Respondent

Appearance:

Mr. R.C. Chaudhary, Advocate for the Appellant
Mr. P.K. Singh, DR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing/Decision: 15.6.2009

Stay **ORAL ORDER NO .** 502-503/2009-Ex
Final order No: 406-407/2009-Ex

Per M. Veeraiyan (for the Bench):

After hearing both the sides for a while on the stay applications, we felt that it is expedient to finally dispose of the appeal and accordingly, we grant waiver of requirement of pre-deposit of dues and proceed to dispose of the appeals itself.

2. The appellant is a manufacturer of excisable goods and the dispute relates to liability of Cenvat credit in respect of service tax paid on outward freight during the period April, 2007 to December, 2007. Original authority held that as the place of removal is factory gate, they are not eligible for credit of service tax paid on such freight. Commissioner (Appeals) upheld the order of the original authority, inter alia, holding that the documents like invoices, GRs and insurance policies submitted before him were not placed before the adjudicating authority.

3. Learned advocate for the appellant submits that the facts of their case are identical to those dealt with in the decision of Larger Bench in the case of M/s. ABB Ltd. & others reported in AIT-2009-226-CESTAT and also ~~there~~ in the case of Gujarat Ambuja Cement [UOI [2009 (14) STR 3 (P&H)]. He claims that the goods have been supplied on a FOB destination

basis and the liability on damages rest with the appellant till the same is delivered to the recipient at the latter's premises. However, he submits that these points have not been specifically dealt with by the Commissioner (Appeals) in the impugned order. As these facts appear relevant to consider the application of the decisions sought to be relied upon by the learned advocate, we deem it proper to set aside the order of the Commissioner (Appeals) and that of the original authority and remand the matter ~~of~~ to the original authority to consider the issues afresh after granting reasonable opportunity of hearing. We clarify that we have not expressed any view on the merits of the case. The appellant is at liberty to produce any evidence, judgements which they would like to rely upon before the adjudicating authority.

4. The appeal is allowed by way of remand. Stay application is also disposed of.

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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