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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/1300/2009,1603/2009 - EX[DB] Date 28/08/2009

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

To :
M/S ANAND NISHIKAWA CO. LTD.
OPP. DEGREE COLLEGE, RAMPUR ROAD,
RUDRAPUR, UTTARANCHAL.
M/S ANAND NISHIKAWA CO. LTD. Appellant
Vs
C.C.E. MEERUT II STAY ORDER NO.850-851/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 585-586/2009- **EX[DB]** dated 25-8-09

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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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)

18.MR. ASHOK KUMAR
M/S ANAND NISHIKAWA CO. LTD. OPP. DEGREE COLLEG,
RAMPUR ROAD, RUDRAPUR, UTTARANCHAL.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

E/Stay/1316/09 in Appeal No.1300 of 2009
E/Stay/1651/09 in Appeal No.1603 of 2009

(Arsing out of Order-in-Original No.54/Comm./M/-II/2008 dated 28.11.2008.12.2008 passed by the Commissioner of Central Excise, Meerut-II)

Date of Hearing/Decision: 24.08.2009

For approval and signature:

Hon'ble Dr.Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr.P.K.Das, Member (Judicial)

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?	yes
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

M/s.Anand Nishikawa Co.Ltd. — Appellants
Shri Ashok Kumar

Vs.

Commissioner of Central Excise, Meerut-II — Respondent

Present for the Appellant: Shri V.Lakshmikumaran, Advocate with Shri B.L.Narsimhan, Advocate

Present for the Respondent: Shri Anil Kumar, DR,Sh.B.K.Singh,JCDR

Coram:Hon'ble Dr.Chittaranjan Satapathy, Member(Technical)
Hon'ble Mr.P.K.Das, Member (Judicial)

STAY **ORDER NO.** 850 - 851 / 09 — Ex
FINAL ORDER NO 585— / 09 — EX

PER: DR.CHITTARANJAN SATAPATHY

Heard both sides. Shri V.Lakshmikumran, learned Advocate appearing for the appellants states that the major part of the demand amounting to about Rs.26 crores relates to issue of reversal of credit in respect of inputs received which were found to be defective and later on returned. According to him, the appellants have reversed the credit in respect of 16 invoices involved whereas a huge demand has been made by the adjudicating Commissioner based on the report given by the cost auditor engaged by the department. For example, in respect of a consignment of 6967 kgs EPDM rejected by the appellant the amount of credit taken is Rs.1,07,013/- which has been reversed by the appellants. However, the value of the same as per cost auditor has been determined at Rs.70,56,01,167/- and accordingly demand of duty has been made to the tune of Rs.11,28,96,186/-. Moreover, he states that the complete details were made available to the adjudicating Commissioner but obviously he has not looked into the same while passing the impugned order. After hearing the mater for sometime, the learned Advocate and the learned JCDR were advised to look at the relevant papers and re-examine the huge difference in respect of the consignment. After verification, both sides report that there are glaring differences which requires to be sent back to the adjudicating Commissioner for reconciliation. Hence, with the consent of both sides, the requirement of pre-deposit is waived and the impugned order is set aside. The matter is remanded to the adjudicating Commissioner for fresh decision. He will give adequate opportunity of hearing to the appellants before passing fresh order and shall look into all the details of calculation which has been filed by the appellants earlier before him and also subsequently. Other two minor issues dealt with in the adjudication order are also left open for fresh decision by the adjudicating Commissioner. Both the appeals are allowed by way of remand.

(CHITTARANJAN SATAPATHY)
MEMBER (TECHNICAL)

(P.K.DAS)
MEMBER (JUDICIAL)

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