

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**  
**SINGLE MEMBER APPEAL BRANCH**

Appeal No. E/1259/2006-SM[BR]

Date 21/02/2008

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

To:  
M/S R.C.ENGEE WORKS P LTD.  
B-3,INDLAREA,B.S.ROAD,GHAZIABAD

M/S R.C.ENGEE WORKS P LTD.

Appellant

Vs

Respondent

CCE,GHAZIABAD

I am directed to transmit herewith a certified copy of Final order No. 331 /2008 -SM[BR] dated 28.1.2008  
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

CCE,GHAZIABAD

CGO COMPLEX-2,KAMLA NEHRU  
NAGAR,GHAZIABAD

2. Adv. / Consult

MR.S.D.GAUR

SB-108, SHASTRI NAGAR, GHAZIABAD.

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
COURT NO.II

E/Appeal No.1259 /2006-SM

(Arising out of order in appeal No.6/CE/Gzb/06 dated 16.1.06 passed by the  
Commissioner of Central Excise (Appeals), Ghaziabad)

For approval and signature:

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?
2. Whether it should 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?

NW

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M/s R.C. Engg Works Pvt Ltd

Appellant  
(Rep. by Shri S.D. Gaur, Consultant)

Vs

CCE, Ghaziabad

Respondent  
(Rep. by Shri A.K. Rastogi, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 28.1.2008

Final Order No. 331/08 (BR)

Per P.K. Das:

Heard both sides and perused the records.

2. The Assistant Commissioner of Central Excise confirmed the demand of duty vide order dated 26<sup>th</sup> June, 1996, which was challenged by the appellants before the Commissioner (Appeals). By order in appeal dated 9.5.1997, the Commissioner (Appeals) rejected the appeal filed by the appellants. Thereafter, the appellants deposited the entire amount of duty on 4.11.1997 and 15.1.1998 and also filed appeal before the Tribunal. The Tribunal set aside the adjudication order by Final order dated 15.11.2003. The appellants filed refund claim of duty deposited during the proceedings. The Adjudicating Authority sanctioned the refund. The Revenue filed appeal before the Commissioner (Appeals) against adjudication order. The Commissioner (Appeals) set aside the adjudication order on the ground that the deposits were made by the appellants at their own account.

3. The main issue in this case is that the appellants deposited the duty and filed appeal before the Tribunal <sup>which</sup> covered under Section 35-F of Central Excise Act, 1944, which provides that where any person desirous of appealing against the order or decision, pending the appeal, shall deposit with the adjudicating authority the duty demanded or the penalty levied. Proviso to Section 35<sup>F</sup> of the Act provides that the deposit of duty demanded or penalty levied would cause undue hardship, the Appellate Authority may dispense with such deposit. So, in terms of Section 35-F of the Act, it is required to deposit duty or penalty to file appeal. In this case, the appellants desired to file appeal before the Tribunal and deposited the duty and therefore, such deposit is within the ambit of Section 35-F of the Act.

Accordingly, the Order of the Commissioner (Appeals) is set aside.

The adjudicating authority is directed to refund the amount in accordance with law. The appeal is allowed.

(Order dictated and pronounced in the open Court).

MPS\*

(P.K. Das)  
Member(Judicial)