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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/3481/2006-SM[BR] Date 28/02/2008

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

To :
M/S REALTIMES SYSTEMS LTD
A-49,OKHLA INDUSTRIAL AREA, PHASE-I, N.DELHI.
110020

M/S REALTIMES SYSTEMS LTD — Appellant
Vs
C.C.E.DELHI II — Respondent

I am directed to transmit herewith a certified copy of Final order No. 358/2008 -SM [BR] dated 7.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E.DELHI II
   C.R.BUILDING,I.P.ESTATE, N.DELHI.
2. Adv. / Consult
   MR.R.C.VACHHER
   113,NAVJEEVAN VIHAR,N.DELHI
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 Publictions (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.3481 /2006-SM

(Arising out of order in appeal No.43/CE/DLH/06 dated 31.7.06 passed by the Commissioner of Central Excise (Appeals), New Delhi).

For approval and signature:

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?
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?

N

M/s Real Times Systems Ltd — Appellant
(Rep. by Shri R.C. Vachher, Advocate)

Vs

CCE, Delhi-II — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 7.2.2008

Final Order No. 358/08-SM(BR)

Per P.K. Das:

The relevant facts in brief are that the appellants cleared the duty paid inputs for rectification without reversing credit in RG 23-A, Part II account. After rectification of the inputs, the supplier returned the inputs at the appellants factory. The appellants issued the debit notes at the time of clearance of inputs which were cancelled after receipt of inputs. The Adjudicating Authority denied credit on the ground that the inputs were cleared without debiting the cenvat credit. The Commissioner (Appeals) upheld the adjudication order.

2. After hearing both the sides and on perusal of record, it is seen from the adjudication order that the appellants produced detailed account in support of their contention that the duty paid inputs cleared for rectification and returned back to their factory for use in the manufacture of final product. The Adjudicating Authority observed that the contention of the appellant does not appeal to the common sense. It has been observed by the Adjudicating Authority that the proper course of appellant to debit the amount of cenvat credit simultaneously for raising of debit notes. The Commissioner (Appeals) has not given any finding in respect of the contention of the appellants. To my mind, evidence cannot be brushed aside by applying common sense. In any event, it has been observed by the Adjudicating Authority that the appellants should have adopted the procedure to debit the amount in cenvat credit. However, the appellants produced the evidence in support of their contention that the duty paid inputs were returned back to their factory after rectification which are required to be examined by the adjudicating authority. Accordingly, the impugned order is set aside and the matter is remanded to the adjudicating authority to

examine the evidences and to pass fresh order after giving proper opportunity of hearing to the appellants. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*