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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/2608/2006 – SM[BR]

Date 10/11/2008

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

To :
RAYMOND LTD.

MR. VASANT NAAG, GENERAL MANAGER
(INDIRECT TAXTAION), RAYMOND LTD.
JEKEGRAM, POKHARAN ROAD NO. 1 THANE
[WEST] 400606 MAHARASHTRA

RAYMOND LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1416 / 2008 SM[BR]** dated 28.8.2008

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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

SHRI VASANT NAG GENERAL MANAGER
M/S APPELANT;------------

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 28.8.2008

E/Appeal No. 2608/06-SM

(Arising out of Order-in-Appeal No. 120/RPR-1/2006 dated 21st June, 2006 passed by the Commissioner Central Excise & Customs (Appeals), Raipur)

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?

M/s Raymond Ltd. — Appellant/Applicant
(Rep. by Shri Vasant Nag, General Manager)

Vs.

CCE, Raipur — Respondent
(Rep. by Shri R.K. Verma, DR)

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

Final Order No. 1416/08-SM(BR)

Per: P.K. Das

The Appellant filed this appeal against denial of credit of Rs. 5,044.00 and interest.

2. After hearing both the sides and on perusal of the records, the main contention of the ld. Representative of the appellant is that the credit was denied on Batteries, Bolts and Nuts without examining the use of the items. He further submits that interest is not payable in view of the decision of the Tribunal in the case of M/s Ruby Mills Ltd. Vs. CCE Raigad reported in 2007-TIOL-1457-CESTAT- Mumbai. It is seen that the Appellant reversed the credit in 2000. The Tribunal in the case of M/s Ruby Mills Ltd. (Supra) held that reversal of credit before 11/5/2001, no interest is recoverable under Section 11AB of Central Excise Act, 1944. The relevant portion of the said decision is below:

> "It can be noticed that the orders both the lower authorities have not considered the provisions of Section 11AB in its entirety as it stood during the relevant period. The demand of duty of ineligible Cenvat/Modvat credit was for the period prior to 11.5.2001, i.e. when the amendment to Section 11AB carried out. Sub-Section (2) to Section 11AB specifically states that the "provisions of sub-section (1) shall not apply to cases where the duty became payable or sought to have been paid before the date on which the Finance Bill 2001 received its assent by the President". The wordings of the sub-section (2) are very clear and squarely applicable in the current case before me. In the current

case, the denial of the ineligibility of credit, at the hands of appellant was prior to 11/5/2001, i.e. on the date when the Finance Bill 2001 was given assent by the President. And it is also on records that the appellant had deposited the entire amount of ineligible credit on 5.3.2001.

Further, as correctly contended by the Ld. Advocate, the issue is squarely covered in their favour by the decision of the Tribunal in the case of Union Air Products (P) Ltd. Vs. CCE, Kochi as reported at [2006 (76) RLT 360 (CESTAT-Ban.)]. It is seen that the issue in that case was identical as is before me.

Accordingly, respectfully following the decision of Division Bench. I find that the impugned order is unsustainable and is liable to be set aside and I do so. The appeal is allowed with consequential relief, if any".

3. In view of the above decision, the demand of interest is set-aside. Considering the amount of denial of credit, this order is passed without going to the merit of case on denial on credits. The appeal disposed of in the above terms.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta