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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/4012/2006 – SM[BR] E/ CROSS/175/2008 Date 17/11/2008

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

M/S NOORANI TEX PRINTS LIMITED — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1467 / 2008- **SM[BR]** dated 8.10.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S NOORANI TEX PRINTS LIMITED
   F-239 A, 294 & 294 A, MANDIA ROAD, PALI(RAJ)
2. Adv. / Consult SHRI O.P. AGARWAL C.A.
   56, SECTION 7, N.P.H.ROAD JODHPUR -342003

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). Thyagaraya 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 APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.4012/2006-SM, E/Cross 175/08-SM(BR)

(Arising out of order in appeal No. 543/HKS/CE/JPR.II/06 dated 28.9.06 passed by the Commissioner of Central Excise (Appeals), Jaipur-II)

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 ?

   No

4. Whether Order is to be circulated to the Departmental authorities?

   Yes.

CCE, Jaipur-II — Appellant
(Rep. by Shri A.K. Rastogi, Advocate)

Vs

M/s Noorani Tex Prints Ltd — Respondent
(Rep. by Shri O.P. Agarwal, C.A)

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

Date of Hearing: 8.10.08

Final Order No. 1467 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the adjudicating authority allowed the recredit of the amount in the RG 23-A Part II account. The respondent surrendered their Registration Certificate on 12th September, 2005 and therefore, they were unable to utilize the said amount in their RG 23 Part II account. The Commissioner (Appeals) held that there is no restriction to grant refund of balance amount in cash and remanded the matter to the adjudicating authority to sanction the refund in cash. The Revenue filed the appeal against the order of the Commissioner (Appeals).

2. After hearing both the sides and on perusal of the record, it is seen that the Larger Bench of the Tribunal in the case of Gauri Plasticulture (P) Ltd Vs CCE Indore reported in 2006 (202) ELT 199 (Tri. Mum) held that the assessee would not be allowed to claim the refund of un-utilised credit lapsed on surrender of license. In this regard, the learned Counsel submits that Rule 5 of Central Excise Rules provides refund of un-utilized credit on the exported goods. The respondent submitted various documents in support of the case and contended that the goods were exported.

3. In view of the decision of the Larger Bench of the Tribunal in the case of Gauri Plasticulture (P) Ltd (supra), the respondent is not entitled to claim the refund of un-utilised in cash. I find that the Commissioner (Appeals) had not examined the claim of the respondent under Rule 5 of Central Excise Rules, 2002. To my mind, the matter is required to be examined in the light of the submission of the learned Counsel that the refund claim relates to Rule 5 of Central Excise Rules, 2002. In view of that, the order of the Commissioner (Appeals) is set aside. The matter is remanded to the adjudicating authority to examine the claim in the light of Rule 5 of Central

Excise Rules, 2002 as contended by the learned Counsel. The Adjudicating Authority is directed to decide the matter afresh in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*