TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/3739/2006 &1417 /2006 –SM[BR] Date 09/04/2008

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

To :
(1-2) M/S RAYMOND LIMITED(CEMENT DIVISION)
MR. VASANT NAAG,G.M. INDIRECT
TAXATION)RAYMOND LIMITED,
JEKEGRAM,POKHRAN ROAD NO1 THANE(MH)
400606

M/S RAYMOND LIMITED(CEMENT DIVISION) Appellant
Vs
C.C.E.RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 598 -599 /2008 –SM[BR] dated 27.2.2008

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.RAIPUR
   DHAMTARI ROAD, TIKRAPARA, RAIPUR.
2. Adv. / Consult SHRI VASANT NAG , G.M.
   M/S APPELLANT;---------

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.3739 & 1417/2006-SM

(Arising out of order in appeal No.192/RPR.I/06 dated 30.10.06 & 1/Order/Commr/RPR/Remission/0-6 dated 16.3.06 passed by the Commissioner of Central Excise (Appeals), Raipur)

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?

NA

M/s Raymond Limited — Appellant
(Rep. by Shri Vasant Nag, G.M.)

Vs

CCE, Raipur — Respondent
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 27.2.2008

Final Order No. 598-599 /2008-SM(BR)

Per P.K. Das:

Since common issue is involved in these appeals, therefore, they are being taken up together for disposal.

The relevant facts, in brief, are that from 8th to 10th July, 2004, there were floods and excisable goods were destroyed in the appellants factory. By letter dated 11.7.94, the appellants informed the Assistant Commissioner of Central Excise about destruction of excisable goods by flood water which entered in their factory premises. They filed a remission application on 5.11.94 before the Commissioner of Central Excise. Thereafter, a show cause notice was issued proposing payment of duty on the goods destroyed in the floods. The Adjudicating Authority confirmed the demand which was upheld by the Commissioner (Appeals). The appellants filed appeal against the order of the Commissioner (Appeals) bearing Appeal No. E/A No.3739/06. After 12 years, the Commissioner of Central Excise by order dated 16.3.06, rejected the remission application against which the appellants filed Appeal No. E/1417/06. Both the appeals have been taken for hearing today.

After hearing both the sides and on perusal of record, it is seen that the Commissioner rejected the remission application mainly on the ground that the appellants filed the remission application after a period of four months without support of any documentary evidence. It has been observed that such storage of excisable goods outside the gantry, in the open and not covering such excisable goods under insurance indicated that the appellants had not taken proper and reasonable care in storing the goods. It is revealed from the record that the appellants informed the jurisdictional Assistant Commissioner about the destruction of excisable goods by flood water by letter dated 11.7.94. The learned Representative of the appellants drew attention of the Bench to the Trade Notice issued by the Meerut Collectorate

No.206/84 dated 1.12.1984. To avail the provision of remission of duty, the assessee is required to inform the Range Superintendent within 24 hours regarding loss or destruction of excisable goods by natural causes or accident such as flood, cyclone and fire etc and furnish the relevant documents as prescribed in the Trade Notice. It is seen that the appellants informed the Assistant Commissioner by its letter dated 11.7.94 within the stipulated period as prescribed in the said Trade Notice. The learned Representative on behalf of the appellants submits that they had filed all the documents as required under the Trade Notice which was not considered by the Commissioner.

I find that the appellants informed the Department within the stipulated period as prescribed in the Trade Notice and therefore, there is no reason to reject the remission application for the alleged delay of four months. I agree with the submission of the learned Representative that the remission application cannot be rejected on the ground that the appellants had not taken proper and reasonable care in storing the goods which is supported by the decision of the Tribunal in the case of Bengal Chemicals and Pharmaceuticals Vs CCE reported in 2003 (158) ELT327. In any event, the Commissioner observed that the appellants did not furnish the documentary evidence like insurance, report to the district authorities etc. I find that the documents filed by the appellants in the present appeal, are required to be verified by the Adjudicating Authority. Accordingly, the impugned orders are set aside and the matter is remanded to the Commissioner of Central Excise to examine the documents and to pass fresh order in respect of the application for remission of duty. After disposal of the remission application, the adjudicating authority shall decide the demand of duty. Both the appeals are allowed by way of remand

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*