

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

Appeal No. E/1638/2007 - EX[DB]  
E/S/1317/2007-EX  
E/M/387/2009-EX

Date 20/05/2009

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

To :  
M/S CARRIER AIRCONDITIONING AND  
REFRIGERATION LTD.  
(NOW KNOWN AS CARRIER REFRIGERATION AND AIR-  
CONDITIONING LTD, NARSINGPUR KHERKI DAULA  
POST, GURGAON  
M/S CARRIER AIRCONDITIONING AND  
REFRIGERATION LTD.

C.C.E. DELHI III

STAY ORDER NO.424/2009-EX  
MISC ORDER NO. 307/2009-EX

Appellant

Vs  
Respondent

EX[DB] dated 29-4-09

I am directed to transmit herewith a certified copy of Final order No. 331/2009-

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(Excise Appeal Branch)

**Copy to :**

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, MAYUR VIHAR PHASE-I, DELHI-110 091.

3 C.D.R

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

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

16 Office Copy

17 Guard file

18 HON BLE PRESIDENT

  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL, NEW DELHI  
PRINCIPAL BENCH, COURT NO. I**

**Excise Misc. Application No. 387 /2009- Ex(BR)  
Excise Stay Application No. 1317 /2007- Ex(BR)  
Excise Appeal No. 1638 /2007- Ex(BR)**

[Arising out of Order-in-Original No. 09/PP/CE/2007 dated 31.3.2007  
passed by Commissioner of Central Excise, Delhi III, Gurgaon]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President  
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see : *Yes*  
the Order for publication as per Rule 27 of the  
CESTAT (Procedure) Rules, 1982?
  2. Whether it should be released under Rule 27 : *No*  
of the CESTAT (Procedure) Rules, 1982 for  
publication in any authoritative report or not?
  3. Whether Their Lordships wish to see the fair : *Seen*  
copy of the Order?
  4. Whether Order is to be circulated to the : *No*  
Departmental authorities?

M/s. Carrier Airconditioning &  
Refrigeration Ltd.

Appellant

Vs.

Commissioner of Central Excise  
Delhi III

Respondent

**Appearance:**

Mr. R. Krishnan, Advocate for the Appellant  
Mr. Prabhat Kumar, Special Counsel for the Respondent

**CORAM:**

▲  
Hon'ble Mr. Justice R.M.S. Khandeparkar, President  
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 29.4.2009

Misc ORDER NO. 307/09-EX  
 FINAL ORAL ORDER NO. 331/09-EX  
 STAY ORDER NO. 424/09-EX

**Per Mr. Justice R.M.S. Khandeparkar** (for the Bench):

Heard.

2. This matter relates to the order dated 5.4.07 passed by the Commissioner of Central Excise, Delhi III, Gurgaon. Apart from various contentions sought to be raised in the matter, it has been strenuously argued on behalf of the appellant that there was total denial of natural justice to the appellant by the lower authority while disposing of the matter inasmuch as the appellant had no opportunity to file detailed reply to the show cause notice dated 31.3.93 which was issued to the appellant on account of failure on the part of the department to furnish the documents to the appellants which were seized by the department.

3. Considering the nature of controversy, as in our opinion, no purpose would be served by dealing with the matter on merit at appellate stage. More particularly in view of the fact, which is not in dispute, that the appellant had no opportunity of having access to their own documents relevant for the case as these documents remained in the custody of the Department. It goes without saying, therefore, that the appellant could not have been expected to file a detailed reply to show cause notice in the absence of documentary evidence being available to them to put forth their case. In the circumstances, therefore, we waive the requirement of pre-deposit and proceed to dispose of the appeal at this stage itself.

4. Since the appellants were made available copies of relevant documents very recently during the pendency of this appeal, that appellants could not have been expected to prepare their reply to the show cause notice in the absence of such documents.

5. The advocate for the appellant on instructions have also submitted that if the matter is remanded giving opportunity to the appellant to file the reply to the said show cause notice, the appellant would do so by extending all the co-operation on their part to dispose of the matter as expeditiously as possible.

6. In the circumstances, without expressing any opinion on any of the points sought to be raised in relation to the merits of the case, we hereby set aside the impugned order and remand the matter to the Commissioner to dispose of the same de novo after giving opportunity to the appellant of filing the reply to the said show cause notice. The learned advocate for the appellant undertakes to file the reply to the show cause notice within four months from today. The reply to the show cause notice, therefore, should be filed on or before 24.8.2009 without fail before the concerned authority and thereupon the authority shall fix the date for further proceedings in the matter. Parties are expected to render necessary co-operation to dispose of

the proceedings as expeditiously as possible. Bearing in mind the fact that the show cause notice was issued in the year 1993, the authority shall dispose of the matter as expeditiously as possible and in any case prior to 31.3.2010.

7. In view of what is stated above, the appeal and application stand disposed of in the above terms.

( Justice R.M.S. Khandeparkar )  
President

( M. Veeraiyan )  
Member(Technical)

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