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/1389/2007 – SM[BR] Date 11/08/2009

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

To :
M/S RAYMOND LTD.
DY. GENERAL MANAGER (EXCISE), TEXTILE DIVISION, POKHRAN ROAD NO. 1, JEKEGRAM, THANE-400606.

M/S RAYMOND LTD. Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 901 / 2009 –SM[BR] dated 24.7.2009 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.PDS LEGAL,ADVOCATE
   31, MAKER CHAMBERS VI, NARIMAN POINT, MUMBAI
3. S.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 Publictions 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 Kunj. 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

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.1389 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.228-CE/BPL/2006 dated 14.12.2006 passed by the Commissioner (Appeals), Central Excise, Bhopal (M.P.)]

Date of Hearing/ Decision:24.07.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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 Limited ...Appellant
(Rep. by Shri Jeetu Motwani, Advocate and Shri U.P. Padmanabh, Advocate)

Vs.

CCE, Bhopal ...Respondent
(Rep. by Shri S.K. Bhaskar, SDR)

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

Final Order No....901/2009 SM (BR)......../Dated:24.07.2009

Per P.K. Das:

Ld. Advocate on behalf of the appellant submits that during the period October, 1998 to December, 1999, they cleared the by-product, R.C. Noil Waste at nil rate of duty. They were also reversing the proportionate credit used on this waste. Subsequently, it was noticed that no reversal is required under Rule 57D of the erstwhile Central Excise Rules, 1944. Hence, they filed refund claim of Rs.4,98,052/-. The Original Authority rejected the refund claim on the ground of time bar. The matter went up to the Tribunal. By order dated 13.3.2006, the Tribunal remanded the matter to the Original Authority to consider the issue on the basis of the decision of the Tribunal in the case of Patel Field Marshal Industries Vs. CCE, Rajkot – 2003 (158) ELT 483 (Tribunal) keeping all the issues open for redetermination of the refund claims. In de novo adjudication, it was held that the case of Patel Field Marshal Industries (supra) is applicable on the reversal of amount of 8% under Rule 57CC of the Rules which would not apply in the present case. Ld. Advocate also submits that in any event, the Hon'ble Allahabad High Court in the case of Collector of Central Excise, Allahabad Vs. Ram Swarup Electricals Ltd. reported in 2007 (217) ELT 12 (Allahabad) held that no limitation was provided under the Modvat Scheme and Section 11A and Section 11 B of the Central Excise Act, 1944 would not apply in respect of demand and refund of Modvat credit.

2. He fairly submits that this judgement was not placed before the Commissioner (Appeals). He also submits that this decision came after the order of the Commissioner (Appeals).

3. After hearing both the sides, I find that it is fit and proper that the matter should be examined by the Commissioner (Appeals) in the light of

the decision of the Hon'ble High Court. As such, the impugned order of the Commissioner (Appeals) is set aside. The matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the submission of the ld. DR and the decision of the Allahabad High Court. All issues are left open. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 24.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.