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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/2845/2007 – SM[BR] Date 17/11/2009

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

To :
M/S RAJDHANI CRAFTS
1955-1965,6 KM, MILE STONE, CHOMU, JAITPURA,
JAIPUR

M/S RAJDHANI CRAFTS Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1428 / 2009 –SM[BR] dated 11.11.2009 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:11.11.2009

Central Excise Appeal No.2845 of 2007-SM

Arising out of order in appeal No.208-213(GRM)CE/JPR-I/2007 dated 18.7.2007 passed by the Commissioner (Appeals), Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

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

M/s Rajdhani Crafts ... Appellant

Vs.

C.C.E., Jaipur .... Respondent

Appearance:

Shri Atul Gupta, Company Secretary for the appellant
Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1428/2009 SM (Br)

Per M. Veeraiyan:

This is an appeal by M/s Rajdhani Crafts against the order of the Commissioner (Appeals) No. 208-213(GRM)CE/JPR-I/2007 dated 18.7.2007. The said order relates to more than one parties and the present appeal is limited to the order in so far as the same relates to the present appellant.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant is a manufacturer of wooden furniture and has exported the said goods under bond. The appellant is not clearing any goods in the DTA or at any rate, the clearances are not

substantial. The appellant has taken Cenvat credit of excise duty paid on inputs and of service tax paid on input services. As they were not in a position to utilise the credit in view of entire/substantial portion of export, they claimed refund under Rule 5 of Cenvat Credit Rules. The original authority sanctioned the refund under Rule 5. Commissioner took up the matter on review and directed the jurisdictional Assistant Commissioner to file appeal before Commissioner (Appeals). Commissioner (Appeals) vide impugned order (which covered other parties as well) has proceeded under the impression that the appellant has claimed rebate and relying on supplementary instructions issued by the CBEC relating to the rebate granted in respect of the excisable goods cleared on payment of duty has modified the order of the original authority.

4. Learned Company Secretary submits that the order of the Commissioner (Appeals) is erroneous as it has proceeded on wrong assumption. He also submits that there is no dispute about the eligibility of credit taken by them. The restriction of the refund claim by the Commissioner (Appeals) was not warranted.

5. Learned DR fairly agrees that the matter relates to refund of accumulated credit in terms of Rule 5 in view of their inability to utilise the credit due to large scale export by the appellant and does not relate to the rebate claim.

6. In view of the above, the order of the Commissioner (Appeals), in so far as it relates to the appellant is set aside and the matter remanded to Commissioner (Appeals) to consider the issues afresh after granting a reasonable opportunity of hearing. I clarify that I have not expressed any views on the merits of the case. All the issues are kept open.

7. Appeal is allowed by way of remand as above.

(M. Veeraiyan)
Member (Technical)

scd/