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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/1578/2011 – SM [BR] E/ STAY / 2072 /2011 &E/ COD/ 242/2011-SM[BR] Date 02/01/2012

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

To :
M/S RANJANA INDUSTRIES
32-A, LIGHT INDUSTRIAL AREA, BHILAI(CG)

M/S RANJANA INDUSTRIES Appellant
Vs
C.C.E. RAIPUR Respondent

am directed to transmit herewith a certified copy of **Final order No.957/2011-SM[BR]&S/908/2011&M/224/2011** dated 14.12.201 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
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult SHRI ABHISHEK JAJA ADV.
F-78, LAJPAT NAGAR-III, NEW DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise COD Appn. No. E/COD/242/11-SM
Excise Stay Appn. E/S.2072/11-SM in
Excise Appeal No.E/1578/11-SM

[Arising out of Order-in-Appeal No.08/RPR-II/2011 dated 22.02.2011 passed by the Commissioner (Appeals-II), Raipur].

M/s.Ranjana Industries ...Appellant

Vs.

CCE, Raipur ... Respondent

Present for the Appellant : Shri A. Jaju, Advocate
Present for the Respondent:Mrs. R. Jagdav, SDR

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:14.12.2011

Final **ORDER NO.** 957/2011 SM (BR) & **DATED:**
S-908/2011 SM (BR)
M-224/2011 SM (BR)

PER: D.N.PANDA

Ld. Counsel explains that there was mere delay of 22 days in seeking appeal remedy for the health reasons of the authorised officer. No objection was from Revenue. Therefore, MA (COD) is allowed and appeal is admitted.

2. Ld. Counsel says that this case has history of multiple litigation running to different Forums. This is third round litigation before Tribunal. It is also his averment that when the appellant could not make pre-deposit, they were leniently considered in the past for waiver in terms of stay order No.S/88/2000-NB (SM) dated 30.12.1999. In view of such lenient consideration and the aging of litigation, there may not be insistence for pre deposit. Ld. Counsel further submits that at the original stage the disallowance of cenvat credit was Rs.2,27,796/-, But that was finally reduced to Rs.1,94,884/- at adjudication stage. Because certain particulars were not available in the invoice, the Modvat Credit was disallowed. The matter relates to August 1994 to December, 1994. In view of the passing of time, the technical difficulties in the invoices deserves lenient consideration, in view of the judgement of Hon'ble High Court of Punjab and Haryana in the case of Commissioner of Central Excise, Ludhiana vs. Ralson India Ltd. reported in 2006 (202) E.L.T. 759 (P & H). He earnestly presses that the matter may be settled finally since 17 years have elapsed from the relevant period from the date of initiation of proceeding.

3. Ld. DR on the other hand says the claimant has to submit all the particulars for admissibility of the claim.

4. Heard both sides and perused the record.

5. Looking to the length of litigation, it is no more desire to keep it pending. Therefore, both stay application and appeal are taken up for analogous hearing and disposal. Following the judgement of Hon'ble High Court of Delhi in the case of Super Tyres Pvt. Ltd. vs. Union of India- 2005 (186) ELT 49 (Delhi), requirement of predeposit is waived and appeal is disposed by this common order. The authorities have found that the appellant had availed Modvat Credit on the basis of invoices without serial number, details of manufacturer as required under Rule 57GG read with Notification No.32/94-CE (NT), vehicle numbers, the details of supplier and manufacturers as required by both Notification & Circular dated 18.8.1994. Unfortunately, there was not much lapses in between the claim which related to August 1994 to December, 1994 while show cause notice was issued on 1.2.95. The authorities could not find non-receipt of the goods in the premises of the appellant. When they took only two months for issuance of show cause notice they did not make any enquiry at the supplier's end. When the receipt of the goods was not questioned nor delivery of the seller is questioned, the show cause notice lost its foundation. In absence of any allegatgion of non-receipt of the goods and also for any allegation of non-delivery of the goods,

the appellant succeeds. Accordingly, the appeal is allowed annulling the duty demand of Rs.1,94,884/-.

6. In so far as the penalty is concerned, the litigational attitude of appellant is clear. Appellant has not at all come forward to provide details from 1994. Therefore, levy of penalty of Rs.10,000/- by the adjudication order is just and proper and that is confirmed.

7. In the result, appeal is partly allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita