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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. C/522 /2010 – SM[BR] C/ COD / 400 / 2010-SM[BR] Date 13/12/2010

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW
DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant
Vs
M/S RISO INDIA LIMITED. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1394/2010-SM[BR]&M/304/2010 dated 3.12.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S RISO INDIA LIMITED.
   B-3, SECTOR-04, (G.F), NOIDIA (U.P.)-201301
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE 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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Customs COD Application No. 400 of 2010-SM(BR)
Customs Appeal No. 522 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. CC(A)/CUS/I&G/60/2010 dated 3.6.2010 passed by the Commissioner of Customs, New Delhi.]

For approval and signature:

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

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1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

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Commissioner of Customs
New Delhi — Appellants

Vs.

M/s. Riso Iindia Ltd. — Respondent

Appearance:

Shri K.P. Singh, SDR for the Appellants
Shri Hemant Bajaj, Advocate for the Respondent

Final

Date of Hearing/decision : 03.12.2010

ORAL ORDER NO. 1394/2010 SM(BR) & M-304/2010 SM(BR)

Per M. Veeraiyan:

Heard both sides on the application for condonation of delay. Considering the grounds disclosed, the delay of 15 days in filing the appeal is condoned.

2. Considering the nature of issue involved, I take up the appeal for final disposal with the consent of both sides.

3. The original authority rejected the refund claim filed by the respondents on the ground that certain documents have not been submitted. However, it is seen from the order of the original authority that the respondents have filed calculation worksheet for refund, Bill of Entry, TR 6 challans, sale invoice, self declaration and copies of VAT challans. The original authority, however, held that the respondents has not produced ledger account, balance sheet for the relevant period and Chartered Accountant's certificate regarding the sale and to the effect that the burden of 4% of CVD has not been passed on to the buyers. The order does not disclose that the original authority called for these documents and the respondents failed to produce the same. The order also does not disclose that the respondents were given any personal hearing before taking decision adverse to the respondents.

4. The appeal has been filed on the ground that the Commissioner (Appeals) has no power to remand after amendment with effect from 11.5.01 to Section 128A(3) of the Customs Act, 1962 as held by the Hon'ble Supreme Court in the case of Mil India Ltd. vs. CCE Noida reported as [2007 (210) ELT 188].

5. Under these circumstances, I hold that the Commissioner (Appeals) has no powers to remand the matter to the original authority. At the same time, the manner in which the original authority has disposed of the matter is highly unsatisfactory. Instead of making the Commissioner (Appeals) to do the examination of the documents, it is desirable to entrust the matter to the original authority. Therefore, while accepting the contention of the department that the Commissioner (Appeals) has no power to remand, I find the reasoning adopted by the Commissioner (Appeals) for remand appears genuine and therefore, I deem it proper that the matter is heard afresh by the original authority.

6. To enable the same, I set aside the order of the lower authorities and remand the matter to the original authority with the direction that he shall consider the matter afresh. The respondents are directed to produce the required documents within one month from the date of receipt of this order. Thereafter the original authority shall decide the matter after granting reasonable opportunity of hearing.

7. The appeal is allowed by way of remand. COD is also disposed of.

(M. Veeraiyan)
Member(Technical)

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