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/426 /2009 – SM[BR] Date 09/11/2010

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

To :
M/S REKAN EXTRUSIONS PVT. LTD.
E-24-26, UPSIDC INDUSTRIAL AREA, SUMERPUR,
HAMIRPUR.

M/S REKAN EXTRUSIONS PVT. LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1176 / 2010 –SM[BR] dated 11.10.2010 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.I

E/Appeal No.426/2009-SM

(Arising out of order in appeal No.378/CE/Appl/KNP/08 dated 22.10.2008 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing: 11.10.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, 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 Rekan Extrusions Pvt Ltd — Appellants

Vs

CCE, Kanpur — Respondent

Appeared for the Appellant: Shri R. Santhanam, Advocate
Appeared for the Respondent: Shri Anil Khanna, SDR

Coram: **Hon'ble Shri Ashok Jindal ,Member (Judicial)**

Final ORDER 1176/2010 SM (BR)

Per Ashok Jindal:

The appellant has filed this appeal against the impugned order. Demand of Cenvat credit, interest and penalty was confirmed against the appellant on account of non-receipt of the impugned C.I. Ingot Moulds in their factory.

2. The facts of the case are that an audit was conducted at the factory premises of the appellants on 9.12.2003. During the course of audit, it was found that the appellant has taken the credit on 332 number of C.I. Ingot moulds during the period 26.5.2001 to 9.12.2003 and whereas on physical verification, only 145 C.I Ingot moulds were found available. Therefore, it was alleged against the appellant that they have not received the 187 C.I. Ingot moulds and availed the cenvat credit without receiving the goods. Both the lower authorities confirmed the demand against the appellants.

3. The learned Advocate for the appellants submits that the appellant is challenging the impugned order on two grounds (a) on merits and (b) on limitation. He submitted that the audit was conducted in December 2003 and show cause notice was issued on 2.8.2006 which is beyond the statutory period of limitation and the show cause notice is time barred. He also submitted that as all the records ~~reports~~ were available during the audit conduced at the factory premises, the extended period is not ~~extended~~ invokable in this case. On merits he submits that as per the practice, the C.I. Ingot moulds which are being used for manufacturing MS ingots (that is melted 10 or 12 times). Hence they become unfit for use and become scrap which was being melted by them and thereafter cleared on payment of duty.

4. Heard. On careful consideration of the submissions made by the learned Counsel, I find that the appellant has challenged this matter before the lower appellate authority on merits as well as on limitation. But while passing the impugned order, the lower appellate authority has not dealt with the ground of limitation which is a prime duty of the lower authority to deal first without going into the merits of the case. Accordingly, this order deserves no merit and hence the same is set aside and the matter is sent back to the lower appellate authority to pass the order on the ground of limitation. The appeal is allowed by way of remand.

(ASHOK JINDAL)
Judicial Member

MPS*