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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/1153/2009 – SM [BR]** Date **13/04/2011**

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

To :
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI II Appellant

Vs

M/S RACHNA ELECTRICALS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 185 / 2011 –SM[BR]** dated 29.3.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RACHNA ELECTRICALS PVT. LTD.
C-199, MAYAPURI INDUSTRIAL
AREA,PHASE-II, NEW DELHI.

2. Adv. / Consult SHRI NAVEEN MULLICK ADV.
B-388, MEERA BAGH NEW DELHI-63.

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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. III

Date of Hearing : 29.3.2011

Excise Appeal No. 1153 of 2009-SM

[Arising out of the Order-in-Appeal No. 01/CE/DLH/2009 dated 4.2.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-II]

Coram:

Hon'ble Mr. Mathew John, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	seen
4.	Whether order is to be circulated to the Department Authorities?	NO

CCE, Delhi-II — Appellant

Vs.

Rachna Electricals Pvt. Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri K.P. Singh, DR
Appeared for Respondent : Shri Naveen Mullick, Advocate

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final

Order No. 185/2011 SM (BR) dated............

Per Mathew John:

The Respondent is a manufacturer of electrical goods including geyser. During 2004 their dealers returned a few numbers of geysers because it were found to be defective in certain respects and the dealers were not able to sell the products. When the goods were received back in the factory, the Respondent wanted to take benefit of Rule 16(1) of Central Excise Rules, 2002 and gave intimation to the Range Superintendent regarding the fact that the goods had been returned by the dealer and they wanted to take Cenvat credit of duty paid on the returned goods. They had a difficulty that the goods returned were from different lots cleared to the dealer and hence it had not came back under the invoices on which it were cleared but under cover of a debit memo issued by the Dealer. So they sought permission under Rule 16(3). The Inspector of Central Excise, who visited the factory verified the goods and made an endorsement that the Respondent may keep separate account for these goods. Thereafter, the matter travelled to the Divisional Assistant Commissioner, who in turn wrote to the Commissioner of Central Excise to allow the Respondent to take Cenvat credit of duty paid by the Respondent on the returned goods, because under Rule 16(3) of Central Excise Rules, 2002, the proper officer to give such permission is the Commissioner of Central Excise. The Commissioner of Central Excise did not agree with the proposal made by the Divisional Officer to give credit on the ground that prior permission of the Commissioner was not taken before receiving the goods into the factory. This decision of the Commissioner was communicated to the Respondent by an Assistant Commissioner in his office. Aggrieved by this decision, the Respondent filed an Appeal before the Tribunal. The Registry of the Tribunal returned their appeal with the observation that such appeal lies to the Commissioner (Appeals). They filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) after seeing all correspondence at various stages including the stage of receipt of the returned goods, request for verification of the goods, the communication made by the Divisional Officer to Commissioner and the communication by the Assistant Commissioner in the office of the Commissioner to the effect that the Commissioner did not agree to give permission in this regard, decided that the Respondent should be allowed to take credit of the goods.

2. The Respondent filed a refund claim for Rs.78,253/- on 11.4.2005. At this stage, the Assistant Commissioner rejected the refund claim on the ground that the Respondent failed to follow the provisions of sub-rule (1) of Rule 16 of Central Excise Rules 2002 and did not disclose the process undertaken on the returned goods as required under Rule 16(2) of Central Excise Rules, 2002. He also raised the ground that these goods were not accompanied by any duty paying documents and in the absence of any serial number it could not be proved by the Respondent that the returned goods were the same on which duty was already paid. He also observed that the claim of the Respondent under Rule 16(3) of Central Excise Rules 2002 was rejected by the Commissioner of Central Excise, Delhi-II on the ground that the Respondent had not sought prior permission of the Commissioner before bringing the returned goods into the factory as required under Rule 16(3) of the Central Excise Rules 2002. Aggrieved by this order, the Respondent filed an appeal with Commissioner (Appeals). The Commissioner (Appeals) after considering the entire matter allowed the appeal and the Respondent became eligible of refund of Rs. 78,253/-. This amount has not been refunded to

them so far. Revenue has filed this appeal, aggrieved by this order of the Commissioner (Appeals).

3. The submission of the ld. DR is that the identity of the goods which were returned was not established and without establishing the identity the impugned refund cannot be granted. The submission of the ld. Advocate for the Respondent is that the issue of identity was never in question when the goods were received back, intimation was given to the department and verification was conducted. There is no way the identity can be established at this point of time. However, he points out the entire correspondence that took place in this matter and argues that the record shows that this issue regarding identity has been taken by the department only at a later stage of the proceedings.

4. Considered arguments of both sides.

5. I note that the issue of identity of the goods was not raised when the Inspector went to the factory and verified the returned goods. Further, Rule 16(3) does not talk about prior permission from Commissioner for giving necessary permission. I also note that during the entire course of these events, the Respondent has acted bonafidely and had taken all steps to keep the department informed. The department has not been willing to give a decision allowing his claim or disallowing the claim giving justifiable reason for such decision. This shows that during the entire proceedings, the Respondent was not at fault. This is typically a case where the Commissioner had the necessary power vested in him under the relevant rule. But he simply quoted a reason not stated in the rules and without giving an opportunity to hear the

affected party, passed a very short order and got it communicated through his subordinate. On the other hand, the Commissioner (Appeals) has passed speaking order and, therefore, the order of Commissioner (Appeals) should prevail. In such circumstances, I find that the Respondent is eligible for the refund claim and no relief is due to the appellant/department from this appeal filed before this Tribunal. Accordingly, the Appeal is rejected with consequential relief to the Respondent.

(Dictated & pronounced in open Court)

(Mathew John)
Member (Technical)

RM