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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date **02/02/2011**

Appeal No. E/1139/2010 - EX[DB] E/STAY/1197/2010-EX[DB]

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

To :
C.C.E. JAMMU
OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

Appellant

C.C.E. JAMMU

Vs
Respondent

M/S PLATINUM IT SOLUTIONS

I am directed to transmit herewith a certified copy of **Final order No. 157/2011 WITH S.O.179/11 -EX[DB]** dated passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S PLATINUM IT SOLUTIONS
PHASE-II,INDUSTRIAL
EXTENSION AREA,
GANGYAL,JAMMU.
2. Adv. / Consult
MR.TARUN GULATI, ECONOMIC LAWS
PRACTICE 405-406, 4TH FLOOR,
WORLD TRADE CENTRE.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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
(Excise Appeal Branch)

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

COURT NO. I

Date of Hearing : 14.1.2011

Excise Appeal No. 1139 of 2010-Ex.

[Arising out of the Order-in-Appeal No. 32/CE/Appl/Chd-II(JK)/10 dated 18.2.2010 passed by The Commissioner (Appeals), Central Chandigarh]

For Approval and signature :

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Mathew John, Technical Member

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 would 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 Department Authorities?	:	Yes

CCE, Jammu — Appellant

Vs.

M/s Platinum IT Solutions — Respondent

Appearance :

Appeared for Appellant : Ms. Monica Batra, DR
Appeared for Respondent : Sh. Tarun Gulati & Sh.K. Kunal, Advocates

CORAM: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Mathew John, Technical Member

FINAL Order No. 157/2011-SX dated......................

Per Mr. Justice R.M.S. Khandeparkar:

The present appeal arises from order dated 19th Feb. 2010 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the appeal filed by the respondent against the order of the adjudicating authority has been allowed and order of the adjudicating authority has been modified. The adjudicating authority vide its order dated 3rd December 2008 had rejected the refund claim for Rs.1,08,53,742/- along with education cess amounting to Rs.2,25,504/- and higher education cess of Rs.1,12,752/- on the ground that the respondent's unit was situated in the land having Khasra No. 422 which was not specified in the Annexure-II of the Notification No. 56/2002-CE dated 14th November 2002.

2. The respondents are engaged in the manufacture of public address system classifiable under Chapter Heading 8542 of the First Schedule to the Central Excise Tariff Act, 1985 and were availing exemption benefit under Notification No. 56/2002-CE dated 14th November 2002, by way of cash refund of duty paid through PLA. The respondents accordingly had filed refund claim application for refund of amount of Rs. 1,08,53,742/- along with the education cess of Rs. 2,25,504/- and consequently higher education cess amounting to Rs. 1,12,752/- for the month of June, 2007.

3. It is undisputed fact that in the Notification No. 56/2002 and particularly in the Annexure II thereof, Khasra No. 422 was not mentioned at the time, the matter was decided either by the adjudicating authority or by the lower appellate authority. However, under Notification dated 15th Sept. 2010 on the File No.

354/226/2009-TRU, the original Notification No. 56/2002 has been corrected to the extent that the Khasra No. 5 mentioned in the said annexure is ordered to be read as Khasra No. 422. Considering the same, ld. Advocate for the respondent placing reliance in the decision in the matter of **K.C. Food Products Pvt. Ltd. Vs. CCE, Jammu & Kashmir** reported in 2007 (215) ELT 179 (Tri.-Del.) and **CCE, Jammu & Kashmir Vs. V. Bhatia International** reported in 2007 (219) ELT 463 (Tri.-Del.) submitted that the dispute which was sought to be raised by the department regarding the claim of the appellant stands no more valid and the ground on which the benefit which was sought to be denied to the appellant by the adjudicating authority no more subsists.

4. Considering the corrigendum dated 15th September 2010 to the Notification No. 56/2002 dated 14th November 2002, it is apparent that the factory situated in Khasra No. 422 in the district of Jammu was covered by the said notification. Since the notification dated 15th Sept. 2010 is issued in the form of corrigendum to the original notification, the corrections which are sought to be made in the notification will have to be read from the date of enforcement of the said notification. We are fortified in this view by the decisions in the matter of **K.C. Food Products Pvt. Ltd.** and **V. Bhatia International**.

5. Considering the above circumstances and provisions of law applicable to the facts of the case, we do not find any illegality

committed by the Commissioner (Appeals) while granting the benefit of the said notification to the respondent. The appeal, therefore, fails and is dismissed.

Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

RM

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. I

Excise Stay No. 1197 of 2010-Ex.

CCE, Jammu — Appellant

Vs.

M/s Platinum IT Solutions — Respondent

Appearance

Appeared for Appellant : Ms. Monica Batra, DR

Appeared for Respondent : Shri Tarun Gulati & Sh. K. Kunal, Advocates

Date of Hearing: 14.1.2011

CORAM: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Mathew John, Technical Member

STAY Order No. 179/2011-EX dated..................

Per Mr. Justice R.M.S. Khandeparkar:

Heard.

2. As we propose to dispose of the appeal itself, the application is allowed without insisting for any deposit with direction to the Registry to place the appeal for final disposal forthwith. Application stand disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

RM