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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 17/02/2012

Appeal No. E/2128/2011 - EX[DB]
E/S/2800/11-EX.

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

To :
M/S RASANDIK ENGINEERING INDUSTRIES INDIA LTD.
14, ROZ KA MEO INDUSTRIAL AREA, SOHNA,
GURGAON (HARYANA)

M/S RASANDIK ENGINEERING INDUSTRIES INDIA LTD. Appellant
Vs
C.C.E. DELHI III Respondent

STAY ORDER NO. 284/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/177/ 2012 EX[DB] dated 16-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)
2. Adv. / Consult SH. HEMANT BAJAJ, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29
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-3
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 - 110005
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
(Excise Appeal Branch)

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

Date of Hearing : 10.2.2012

Excise Stay No. 2800 of 2011 & Excise Appeal No. 2128 of 2011

[Arising out of the Order-in-Appeal No. 229/MA/GGN/2009 dated 31.8.2009 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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?	No
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?	Yes

M/s Rasandik Engineering Industries India Ltd. — Appellants

Vs.

CCE, Gurgaon — Respondent

Appearance:

Appeared for Appellant : Shri Hemant Bajaj, Advocate
Appeared for Respondent : Shri S.K. Panda, Jt. CDR

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

STAY order No. 284/2012-EX(BR)
FINAL Order No. A/177/2012-EX(BR) dated............

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty and penalty, we proceed to decide the appeal itself with the consent as both sides agree that the matter needs to be remanded for verification of documents.

2. The dispute relates to the return of the finished goods earlier cleared by the assessee, availment of the credit thereto and the subsequent clearance of the ~~matter~~ same on re-manufacture, in terms of the provisions of Rule 16(2) of the Central Excise Rules, 2002.

3. ~~Being~~ For appreciating the reasons that denying the benefit of the said Rule, we reproduce the part of the impugned order of Commissioner (Appeals) :-

> "A harmonious reading of Rule 16(2) along with Rule 11 of the Central Excise Rules, 2002 makes it clear that goods after rectification have to be cleared on payment of duty under the cover of an invoice. I find that there is no evidence supporting that the goods were cleared on payment of duty

> satisfying Rule 16(2) of the rules ibid. They have not submitted any evidence either in reply to the audit objection or at the time of adjudication that the sales return was sent on invoices evidencing payment of duty. Mere entries of Cenvat credit reversal in their private records do not establish their case. Therefore, I hold that Cenvat Credit availed for amount of Rs. 3,31,113/- is inadmissible to the appellant and the order in original confirming the demand with penalty is correct and legally sustainable."

As is seen from the above, the sole ground for denial of the credit is non-production of invoices issuing clearance of the final product after re-manufacture. Ld. Advocate submits that though the detailed register maintained by them was produced before the authorities, they have not considered the same. However, he fairly agrees that separate invoices were not produced and the Appellant is ~~not~~ in a position to produce the same. As such he submits that the matter be remanded.

5. Ld. Jt. CDR also prays ~~to~~ the above course of action.

6. In view of the above, we set aside the impugned order and remand the matter to original adjudicating authority as the original adjudicating authority has also not verified the invoices.

7. Stay petition and appeal gets disposed of in the above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM