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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

STAY Application No. : E/Stay/297/2012, E/Stay/327/2012
Appeal No. : E/287/2012-EX[DB], E/309/2012-EX[DB]

Dated: **05/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
VIKING ENGINEERS PVT. LTD.
PLOT NO. 71, SECTOR-24,
FARIDABAD. NOW SITUATED AT
PLOT NO. 285, SECTOR-58,
FARIDABAD (HARYANA)

VIKING ENGINEERS PVT. LTD. (Appellant)

VS

C.C.E. DELHI IV (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1197-1198/2012-EX[DB]**, Stay/[redacted] Order No. **SO/1660-1661/2012** and dated **24/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. DELHI IV
New CGO Complex, NH-IV, Faridabad,
Haryana 121001.

2. Advocate(s) / Consultant(s):
N.K. SHARMA & ASSOCIATES,
131-NH-V, RAILWAY ROAD,
NIT,
FARIDABAD,
HARYANA
121001

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

15. **VIKING ENGINEERS PVT. LTD.**
PLOT NO. 71, SECTOR-24,
FARIDABAD. (HARYANA)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:24.09.2012.

Excise Stay Application No.297 of 2012 in Appeal No.287 of 2012 and E/Stay/327 of 2012 in Appeal No. 309 of 2012

[Arising out of Order-in-Appeals No.154-155/CE/APPL/DLH-IV/2011 dated 1.11.2011 passed by the Commissioner of Central Excise (Appeals), Faridabad).

M/s. Viking Engineers Pvt. Ltd. Appellants

Vs.

CCE, Delhi-IV Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? No

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

Appearance: Rep. by Shri N.K. Sharma, Advocate for the appellants.
Rep. by Shri M.S. Negi, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 1660-1661/2012-Ex(BR)
FINAL Order No A/1197-1198/12/Dated:24.09.2012
-Ex (BR)

Per Archana Wadhwa:

Both the matters are being taken up for disposal as the issue is identical. In one case out of the total duty demand of Rs.2,03,569/-, the applicant have already deposited an amount of Rs.1,27,205/- and interest of Rs.31,396/-. The demand confirmed in other case is to the tune of Rs.2,14,380/- along with interest and penalty of identical amount.

2. The appellant are engaged in the manufacture of pre-fabricated building, which they supplied to the Government of Andhra Pradesh under notification no.10/97-CE dated 1.3.97. The said notification prescribes exemption, if the goods are supplied to a Public Funded Research Institution or a university or an Indian Institute of Science and Technology, or other specified customers subject to certain conditions enumerated therein. A manufacturer is to procure a certificate to establish that the goods are required for scientific and technical research. Though the appellant procured the certificate from the Joint Director, Veterinary Biological Research Institute,

Department of Animal Husbandry, Govt. of Andhra Pradesh and cleared the goods without payment of duty, Revenue came to know that the said construction panel cannot be said to be covered by notification in question.

3. Ld. Advocate fairly agrees that construction panels are not entitled to the benefit of notification as they could not be held to be used in Scientific and Research Institute. However, he says that they were under a bonafide belief that the same are covered by the notification and such belief originated from the fact of grant of certificate by the Andhra Pradesh Government. However, he submits that inasmuch as the duty amount is on the lower side, he will not contest the same and would only challenge the imposition of penalty.

4. Ld. DR appearing for the Revenue agrees that if the appellant deposits the duty, penalty can be waived.

5. As such, in view of the submissions made by the ld. Advocate, without going into the aspect of limitation, we uphold the confirmation of duty against the appellant. As regards, penalty there could be a bona fide belief on the part of the appellant as they were given the certificates by their customers i.e. Andhra Pradesh Government. A such, we are of the view that the penalty is not required to be imposed upon the appellant. We accordingly set aside the same while upholding the demand as not contested by the appellant. Both the

appeals as well as stay applications are disposed of in the above manner confirming the demand along with interest.

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.