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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/3735/2012
Appeal No. : E/2754/2012-EX[DB], E/2960/2012-EX[DB]

Dated: **17/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Ras Ploytex Pvt Ltd
Af.3/12, Imlak Katra, Nadesar, Varanasi -
221002(up)

Ras Ploytex Pvt Ltd (Appellant)

VS

C.C.E. & S.T.-Bhopal (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1225-1226/2012-EX[DB]**, Stay/[redacted] Order No. **SO/1751/2012** and dated **05/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

18/10/12
Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Bhopal
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ARERA HILL...HOSHANGABAD
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BHOPAL,
MADHYA PRADESH
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2. Advocate(s) / Consultant(s):
B R TRIPATHI
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CHITRANJAN NAGAR, GHAT KOPAR
(E),
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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

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Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 05.10.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	

Excise Appeal No. 2960 of 2012 with Excise Stay No. 3735 of 2012
(Arising out of order in appeal No. 116/BPL/2012 dt. 18.06.2012 passed by the Commissioner, Central Excise (Appeals) Bhopal).

M/s RAS Polytex Pvt. Ltd. Appellants

Vs.

CCE &ST, Bhopal Respondent

AND

Excise Appeal No. 2754 of 2012
(Arising out of order in appeal No. 116/BPL/2012 dt. 18.06.2012 passed by the Commissioner, Central Excise (Appeals) Bhopal).

CCE&ST, Bhopal Appellant

Vs.

M/s RAS Polytex Pvt. Ltd. Respondent

Present Sh. B.R. Tripathi, Advocate for the assessee
Present Ms. Ranjana Jha, Jt. CDR for the Revenue.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 1751/2012-Ex (BR)
FINAL Order No. A/1225-1226/12-Ex (BR)

Per. Rakesh Kumar:

M/s RAS Polytex Pvt. Limited (hereinafter referred to as the appellant) have a unit at Varanasi for manufacture of poly propylene bags which are cleared on payment of duty to their unit at Satna, where the same are printed. The dispute in the present case is in respect of Satna unit. The appellant were treating the process of printing of bags at their Satna Unit as amounting to manufacture and were paying central excise duty on the printed bags and availing cenvat credit of duty paid on plain poly propylene bags and other inputs. The department being of the view that the process undertaken by the appellant does not amount to manufacture and hence neither any duty was payable on the final product i.e. printed bags nor the Appellant were eligible for cenvat credit, issued a show cause notice for recovery of allegedly wrongly taken cenvat credit amounting to Rs.36,84,078/- alongwith interest and also for imposition of penalty on them. This show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 30.12.2011 by which he confirmed the cenvat credit demand alongwith interest and imposed penalty of Rs.10,00,000/- on the appellant. On appeal being filed to Commissioner (Appeals), the Commissioner (Appeals) vide order-in appeal dated 18.06.2012 upheld the cenvat credit demand alongwith interest, but reduced the penalty to Rs. 1 lakh. Against this order of the Commissioner (Appeals), the appellant have filed this appeal alongwith stay application and against that part of the CCE(Appeals) order reducing the penalty, the department is in appeal.

2. Though the appeal filed by the appellant is listed only for hearing of the stay application, after hearing this matter for some time, we are of the view that appeal filed by the Appellant together with the appeal filed by the department can be disposed of finally. Accordingly, the requirement of pre-deposit of cenvat credit

demand, interest and penalty is waived and both the appeals are heard for final disposal.

3. Shri B.R. Tripathi, Advocate, the ld. Counsel for the appellant, pleaded that the issue involved in this case is squarely covered by the earlier decisions of the Tribunal in the case of **Neel Kamal Polytex Indore (P) Ltd. vs. CCE, Bhopal (Final Order No. A/462/2012 dated 25.4.2012)**; that in any case, when the department's case is that the process undertaken by the appellant does not amount to manufacture, it would amount to clearing the cenvat credit availed inputs as such, which is permitted in terms of Rule 3(5) of the Cenvat Credit Rules, 2004 on reversal of the cenvat credit availed, that in this case the amount paid as duty on the printed bags is more than the cenvat credit availed, and that in view of this, there is no question of demanding cenvat credit again.

4. Ms. Ranjana Jha, ld. Jt. CDR defended the impugned order of the Commissioner (Appeals) with regard to upholding of cenvat credit demand and pleaded that since the process undertaken by the appellant does not amount to manufacture, they were not eligible for cenvat credit. She also pleaded that there was no justification for the Commissioner (Appeals) for reducing the penalty.

5. We have considered the rival submissions. In this case the appellant had taken cenvat credit of the duty on polypropylene bags and treating these process of printing of plain bags as amounting to manufacture, had paid duty on the transaction value of the printed bags. It is not disputed that the duty paid on printed bags is more than the cenvat credit availed in respect of inputs. Even if department's contention that the process undertaken by the appellant does not amount to manufacture, is accepted, it would amount to clearance of cenvated inputs as such, in respect of which the provision of Rule 3(5) of the Cenvat Credit Rules, 2004 would be applicable and in respect of such clearances an

amount equal to the cenvat credit taken would be payable. In this case there is no dispute that in respect of clearances of printed bags, an amount more than the cenvat credit availed has been paid. In view of this, we are of view that there is no justification for cenvat credit demand. The impugned order is not sustainable. The same is set aside. The Appeal and stay application of the Appellant is allowed and the appeal filed by the Revenue is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant