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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. ST/MISC/981/2011, ST/STAY/3239/2011, ST/1535/2011 - CU[DB]   Date **20/03/2012**

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

To :
M/S MITA INDIA PVT. LTD.
(FORMERLY MITA HARIG INDIA (P) LTD.,
21/2, SITE-II, MOHAN NAGAR, GHAZIABAD (U.P.)

M/S MITA INDIA PVT. LTD. Appellant

MISC. ORDER NO.ST/M/65/2012 Vs

C.C.E. GHAZIABAD **STAY ORDER NO.ST/S/285/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/234/ 2012 CU[DB]** dated 14.03.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.R.K. PHILIPS
M/S SIRMACS CONSULTANCY SERVICES,
UG-3, PRAGATI TOWER, 26, RAJENDRA PLACE,
NEW DELHI.
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
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Misc 981/2011, ST/Stay No.3239/2011
in ST/Appeal No.1535/2011

(Arising out of order in appeal No.137/ST/Gzb/2011 dated 15.7.2011 passed by the Commissioner of Central Excise (Appeals), Ghaziabad)

Date of Hearing: 14.3.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
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?	NO
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?	NO

M/s Mita India Pvt Ltd — Appellants

Vs

CCE, Ghaziabad — Respondent

Appeared for the Appellant: Shri P.K. Philips, Advocate
Appeared for the Respondent: Shri K.P. Singh, DR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Misc order No. ST/M/65/12-Cus
Final ORDER No. ST/A/234/12-Cus
Stay order No. ST/S/285/12-Cus

Per Mathew John:

In this case, the dispute involved is about cenvat credit on outward transportation of final product of the appellants from their factory.

The period involved is during 2005-06 and 2006-07. The appellants have already deposited an amount of Rs. 2 lakhs during the pendency of the stay petition out of Rs. 5,42,461/-. Considering the pre-deposit made sufficient for the purpose of Section 35-F of the Act, we waive the requirement of pre-deposit of balance dues and stay petition is allowed.

2. Further we note that this issue has already been decided by the Larger Bench of the Tribunal in the case of ABB Ltd 2009 (15) STR 23 which has been confirmed by the Hon'ble Karnataka High Court in the case of CST Vs ABB 2011 (23) STR 97 for the period in question.

3. Considering the definition of input service which was ~~imposed~~ in force for the said period, ~~therefore,~~ we find that there is no further issue to be discussed in this appeal and accordingly, respectfully following the Hon'ble Karnataka High Court decision, we allow the appeal with consequential benefit to the appellant. Stay petition as also the appeal are disposed of in the above terms.

Misc Application is also disposed of accordingly.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*