

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066  
EXCISE APPEAL BRANCH

Appeal No. E/96-97 /2008 EX in E/STAY/92-93/2008EX

Date 25/01/2008

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

To :  
M/S ABS STEELS (P) LTD.  
137-A, LIGHT INDUSTRIAL AREA, BHILAI

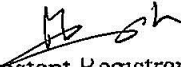
M/S ABS STEELS (P) LTD.

C.C.E. RAIPUR

Appellant  
Vs  
Respondent

STAY ORDER NO 74-75/2008EX

I am directed to transmit herewith a certified copy of Final order No. 30-31/2008 in Excise dated  
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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,  
TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult SH. PRABHAT KUMAR, ADV. and MS RENU GUPTA

B-51, (BASEMENT)

SARVODAYA ENCLAVE, NEAR MOTHER INTERNATIONAL SCHOOL  
NEW DELHI - 110017

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Excise Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI, COURT NO.1

Excise Stay Application Nos. 92-93 of 2008 in and Excise Appeals  
Nos. 96-97 of 2008

[Arising out of Order No.38-39/2007-M(CX)/DA dated 15.11.2007 passed  
by Member (Central Excise), Central Board of Excise & Customs, New  
Delhi]

Date of Hearing/Decision: 24.1.2008

M/s.ABS Steels (P) Ltd.

Applicant

[Rep.by:Mr. Prabhat Kumar & Ms. Renu Gupta,Advocates]

Versus

CCE, Raipur

Respondent

[Rep. Mr. Deepak Garg, Authorized Representatibe(DR)]

Coram: Hon'ble Mr. Justice S.N. Jha, President  
Hon'ble Mr.T.K. Jayaraman, Member (Technical)

Per Justice S.N. Jha:

*Edm* ORDER No 30-31/2008 EX  
STAY order No 74-75/2008 EX

These appeals are directed against an order passed by the Member(Central Excise), Central Board of Excise and Customs, New Delhi, dated 15.11.2007, directing (i) that the facility of monthly payment of excise duty under Rule 8(1) of the Central Excise Rules, 2002 be withdrawn and the appellants pay duty for each consignment at the time of removal goods with effect from 20.11.2007 to 19.2.2008 and (ii) that payment of excise duty by utilization of cenvat credit under rule 3(4) of the Cenvat Credit Rules, 2004 be stopped for the same period i.e. from 20.11.2007 to 19.2.2008.

2. Before approaching this Tribunal the appellant had moved the High Court of Chattisgarh in Writ Petition (T) No.7084 of 2007 which was disposed of on 5<sup>th</sup> December 2007 observing that the appellants had an

alternate remedy of appeal under Section 35B(1) (c) of the Central Excise Act, 1944. It appears from the said order that objection to the maintainability of the writ petition was taken on behalf of the Union of India on the ground that the appellant had an alternate remedy of appeal before this Tribunal, and accordingly, the order was passed.

3. When these appeals were taken up, it was submitted on behalf of the Revenue that Section 35B(1)(c) provides for appeal against an order passed by the Central Board of Excise & Customs (or the Appellate Commissioner of Central Excise) under Section 35, as it stood immediately before the appointed day i.e. 11.10.82. It was pointed out that earlier prior to 11.10.1982, appeals against the orders of the Collector of Central Excise lay to the Central Board of Excise & Customs under Section 35 of the Act which power came to vest in this Tribunal upon the constitution of the Tribunal under Act 14 of 1980. Section 35B(1)(c), however, protected the right of appeal against orders of the Central Board of Excise & Customs in terms of the erstwhile provisions of Section 35 of the Act. The impugned order of the Member not being an order under Section 35, the appeals purportedly filed under Section 35B(1)(c) of the Act are not maintainable.

4. On behalf of the appellant; it was submitted that the appellant has come to this Tribunal pursuant to the order of the High Court on objection being taken on behalf of the Union of India and if the appellant is relegated to the High Court again, on the ground that these appeals are not maintainable in this Tribunal, it would cause undue harassment. It was stated that the impugned order is operative for the period upto 19.2.2008 i.e. 26 days and hence, if the appellant has to move the High Court again the

proposed Writ Petition may be rendered infructuous with the passage of time.

5. We appreciate the fact that the appellant has filed these appeals in the light of the order of the High Court on objection taken on behalf of the Union of India. However, it is well settled that the objection or concession, if any, cannot confer jurisdiction upon any Court or Tribunal. Appeal is creature of statute and <sup>e</sup> those appeals cannot be held to be maintainable merely because they have been filed against the order of the Member of the Central Board of Excise and Customs. We find substance in the objection of the learned Departmental Representative that the appeals filed under Section 35-B(1)(c) are not maintainable.

4. The appeals are accordingly dismissed.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]  
President

[T.K. Jayaraman]  
Member (Technical)