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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

Appeal No. E/796 /2008,E/S/775/08,E/CO/197/08,E/2055/98&E/M/410/08 Date 01/07/2008

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR

2. M/S. VANDANA ROLLING MILLS LTD.
UNIT-II
VANDANA BUILDING, M. G. ROAD,
RAIPUR (MP) 492001

Appellant
Vs
Respondent

M/S VANDANA ROLLING MILLS LTD. MISC. O.NO.626/08-EX
I am directed to transmit herewith a certified copy of **Final order** No.382/08,S.O.NO.672/08 **Excise** dated 25-6-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S VANDANA ROLLING MILLS LTD.
PLOT NO. 58, SECTOR-A,
URLA INDUSTRIAL AREA,
RAIPUR (C.G.)
2. Adv. / Consult SH. R. SANTHANAM, ADV.,
C-3/210, JANKPURI, N. DELHI

3. S.D.R.
~~4. J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. ONLY COPY E/2055/98

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI, COURT NO. I

1. Excise Misc. Application No. 410 of 2008 in Appeal No. 2055 of 1998
2. Excise C.O. No. 197 of 2008 & Excise Stay No. 775 of 2008 in Excise Appeal No. 796 of 2008

1. [Arising out of Order-in-Appeal No. I(Gen) Ch.72/96Z/105/971CX/6023 dated 24.02.1998 passed by the Commissioner, Central Excise & Custom, Raipur]

2. [Arising out of Order-in-Appeal No. 221/RPR-I/2007 dated 29.10.2007 passed by the Commissioner (Appeal-I), Central Excise, Raipur].

Date of hearing/decision: 25.06.2008

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

1. M/s Vandana Rolling Mills Limited ...Appellant
[Rep. by Mr. R. Santhanam, Advocate]

Vs.

CCE, Raipur ...Respondent
[Rep. by Mr. S.M. Tata, SDR]

Vice versa

2. Commissioner, Central Excise & Customs Appellant
[Rep. by Mr. S.M. Tata, SDR]

Vs.

STAY ORDER No 672/08-EX
MISC ORDER. 626/08-EX
FINAL ORDER 382/08-EX

Per: M. Veeraiyan:

1.1. The miscellaneous application No. 410 of 2008 in Excise Appeal No. 2055 of 1998 is for implementation of final order of the Tribunal dated 26.04.2000.

1.2. The Excise Appeal No. 796 of 2008 is against the order of the Commissioner (Appeals) No. 221/RPR-I/2007 dated 29.10.2007. Cross-objection by the respondent No. 197 of 2008 is connected to this appeal.

1.3. As the appeal, the cross-objection and the miscellaneous application are inter-connected, they are being dealt with by a common order.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The appellant is a manufacture of hot re-rolled products of iron and steel. During the relevant period, they were governed by the compounded levy scheme.

b) Commissioner vide his order dated 24.02.1998 provisionally determined the annual capacity for the year 1997-98 as 6570 MT; he also provisionally determined vide his order dated 12.10.1998, the annual capacity as 6426 MT for the year 1998-99. By his order dated 21.05.1999, he provisionally determined the annual capacity for the year 1999-2000 as 6426 MT.

c) The appellant challenged the provisional determination of annual capacity for the year 1997-98 before the Tribunal and Tribunal vide order dated 24.06.2000 in Excise appeal No. 2055 of 1998 determined the annual production capacity as 3051 MTs. Against this order of the Tribunal, we are informed that the Department has filed appeal before the Hon'ble High Court of Chhattisgarh and that no stay order of the Tribunal

d) Based on the Tribunal's order, the appellant filed refund claim in the year 2002. They claimed the refund not only for the year 1997-98 but also for the years 1998-99 and 1999-2000.

4. The Original Authority issued show cause notice in 2003 and an addendum to the show cause notice in 2007 and rejected the refund claims relating to all the three years. He rejected the claims both on merits and on the aspect of unjust enrichment. He also held that the Tribunal's order relates to only 1997-98 and the benefit of the order cannot be extended to the subsequent years. Commissioner (Appeals) vide his impugned order dated 29.10.2007 allowed the refund claims. Hence, the Department is in appeal.

5. The party has filed the miscellaneous application for implementation of the order of the Tribunal dated 26.04.2000.

6. Learned Advocate raised a preliminary objection that the appeal by the Department against the order of the Commissioner (Appeals) dated 29.10.2007 has been filed beyond the stipulated period and that no application for condonation of delay has been filed. He submits that order of the Tribunal dated 26.04.2000 shall be applicable for the later years also as there are no changes in the situation during these years. He seeks dismissal of appeal by the Department and prays for order directing the implementation of order of the Tribunal dated 26.04.2000.

7. Learned DR submitted that the determination of annual capacity was provisional in respect of the three years i.e. 1997-98, 1998-99 & 1999-2000. The appellant was filing returns. The assessments are still provisional. Once the assessments are provisional, the refund claim shall arise only after finalisation of the assessment. Adopting the order of the Tribunal for the years 1998-99 and 1999-2000 is not in order. Annual capacity for the years 1998-99, 1999-2000 is yet to be finalized. Commissioner's finding that in respect of provisional

received the impugned order on 18.01.2008 and that appeal has been filed on time. The preliminary objection is therefore, not sustainable.

9. As regards the annual production capacity for the year 1997-98, the same has already been determined finally by the Tribunal and we have not been shown that there is any stay of the said order. The jurisdictional Assistant Commissioner / Deputy Commissioner is directed to finalise the assessment and take necessary follow up action as per law.

10. The order of the Tribunal dated 24.6.2000 relates to determination of annual capacity for the year 1997-98. The provisional annual capacity determined for the subsequent years is at variance with the annual capacity determined for 1997-98. The order of the Tribunal dated 24.6.2000 cannot be applied straightaway for the subsequent period and to that extent the order of the Commissioner (Appeals) is erroneous. Admittedly, the annual capacity for these two years have been determined provisionally and the same are yet to be finalized by the Commissioner. While finalizing the determination, the appellant is entitled to raise the applicability of Tribunal's order dated 26.04.2000 to the subsequent years. Based on the finalization of the determination, the jurisdictional Assistant Commissioner / Deputy Commissioner shall be required to finalise the assessment and take necessary follow up action as per law.

11. We set-aside the impugned order of the Commissioner (Appeals) and the order of the original authority so as enable ~~to take~~ action on the above lines. The appellant is entitled to raise all the issues before the authorities below. The miscellaneous application for implementation of the order dated 26.04.2000 is also disposed of.

[Dictated and pronounced in the open Court].

[Justice S.N. Jha]