TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/587 /2006-588 /2006 - EX[DB] Date 10/11/2008

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

To :
M/S JINDAL STAINLESS LTD.
DELHI ROAD HISSAR
M/S JINDAL STAINLESS LTD. Appellant
Vs
C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order** No.840-841/2008-**EX[DB]** dated 21-8-08 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. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 - 3
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
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

17. MR.R.K.GUPTA GENERAL MANGAER M/S JINDAL STAINLESS LTD.
DELHI ROAD HISSAR

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 587-588 OF 2006

[Arising out of Order-in-Original No. 27-30/Commr/RP/2005 dated 30.11.2005 passed by the Commissioner of Central Excise, Rohtak]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. 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 would 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?	

M/s. Jindal Stainless Ltd.,
Shri R.K. Gupta, G.M. (Excise) Appellants

Vs.
CCE, Rohtak Respondent

Appearance:

Shri V. Lakshmi Kumaran & Shri Ravi Raghavan, Advocates for the Appellants.
Shri H.K. Thakur, Jt. CDR, Departmental Rep. for the Revenue;

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 21st August, 2008

FINAL ORDER NO. 840-841/08 **dated** ______

Per S.S. Kang:

The appellants filed these appeals against the impugned order whereby demand of central excise duty was confirmed and penalties were imposed. Demand was confirmed after denying the credit in respect of inputs used in generation of electricity on the ground that the electricity generated was cleared to the State Electricity Board without payment of duty.

2. The appellants are engaged in the manufacture of various steel products, such as slabs, blooms, ingots, etc. The appellants installed Arch Furnace for the manufacture of ingots, slabs which were cleared on payment of appropriate duty. The appellants also have strip mill and grooming mill wherein ~~manufacture~~ final product is manufactured and cleared on payment of appropriate duty. The appellants set up a captive power plant for generation of electricity to be used in the manufacture of excisable goods. The appellants purchased furnace oil on payment of duty and availed credit since the fuel was to be used in generation of electricity which is to be used in the manufacture of excisable goods. The appellants entered into an agreement with the State Electricity Board as the power generated in the captive power plant was of fluctuating type and the same cannot be used in Arch Furnace, Strip

Mill and Grooming mill. The power generated by the appellants were cleared to the State Electricity Board because it does not have uniform frequency and the appellants receive the equal quantity of electricity from the State Electricity Board to maintain uniform frequency which was used in the manufacture of excisable goods. The Revenue issued show cause notices for demand of duty by denying credit of duty paid on furnace oil on the ground that electricity generated by the appellants is being cleared to the electricity board.

3. The contention of the appellants is that the entire quantity of fuel on which credit has been availed has been used for generation of electricity. In view of the jerking load poor quality of electricity is generated, therefore, they were forced to clear part of quantity of electricity generated in the captive power plant to State Electricity Board as per agreement known as 'Wheeling Agreement'. The appellants received equal quantity of electricity which has wheeled out from electricity board and the same is used in the manufacture of excisable goods. The contention is that since electricity generated by captive power plant had been used within the factory of production for manufacture of dutiable goods, therefore, credit cannot be denied.

4. The contention of Revenue is that as the appellants availed credit in respect of inputs used in generation of power and the part of power so generated was cleared to the Electricity Board outside the factory of production, therefore, credit was rightly denied.

5. We find that the appellants availed credit in respect of inputs used in generation of electricity. The appellants entered into agreement with the State Electricity Board termed as Wheeling Agreement by which the appellants were permitted to clear electricity generated in the captive power plant and simultaneously to receive equal quantity of electricity from the Electricity Board. The fact that the appellants received same quantity of electricity which were cleared to the Electricity Board is not in dispute. This arrangement was made as the electricity generated in the captive power plant is fluctuating type and as such power cannot be used in the Arch Furnace, Strip mill and Grooming mill. The agreement with the Electricity Board was to maintain uniform frequency of electricity. In these situation as the inputs used in generation of electricity which was cleared to the State Electricity Board and the same quantity was received back from the Electricity Board and used in the manufacture of excisable goods cleared on payment of duty we find that the demand on the ground that the inputs were used in generation of electricity which was cleared outside the factory of production is not sustainable. Therefore, appeals are allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 21st August, 2008

RK