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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/983 /2009 - EX[DB] WITH E/S/945/09-EX

Date 11/11/2009

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

To :
M/S BIRMIWAL STEELS PVT. LTD.
PLOT NO. 6, SARORA, RING ROAD NO. 2, URAL
INDUSTRIAL AREA, RAIPUR.

M/S BIRMIWAL STEELS PVT. LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

STAY ORDER NO.1080/2009-EX

I am directed to transmit herewith a certified copy of **Final order No. 874/ 2009 EX[DB]** dated 23-10-09 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
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 983 of 2009

[Arising out of the Order-in-Original No. 12/Sec 3A/Commr/2008 dated 02/12/2008 passed by The Commissioner, Central Excise & Customs, Raipur, Chattisgarh.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	: 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?	: Yes

M/s Birmiwal Steels Pvt. Ltd. Appellants

Versus

CCE, Raipur Respondent

Appearance

Shri Alok Birthwal, Advocate – for the appellants.

Shri K.P. Singh, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 23/10/2009.
DATE OF DECISION : 23/10/2009.

Final Oral Order No. 874/09 Dated : ____________

Per. Justice R.M.S. Khandeparkar :-

Heard the learned Advocate for the appellants and the learned DR for the respondent.

2. Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all those grounds and suffice to refer to only one ground namely failure on the part of the authority to give fair opportunity to the appellants to prove their case before confirming the demand of duty.

3. It is a case of the appellants that under letters dated 28th of October and 7th of December 1998, they had asked for appropriate order to redetermine the production capacity in the appellant's factory and consequently redemption in the duty liability. The impugned order refers to a letter dated 17th and 18th November 2008 having been addressed to the appellants but was not served upon the appellants and the same was returned to the office of the authority with a postal remark "undelivered" as the firm was closed. Undisputedly no efforts were made to affix the copy of the letter on the door of the premises or to adopt other modes of service of notice upon the appellants in order to make them aware that they were required to produce the copies of the letters dated 28th October and 7th December 1998 claimed by the appellants to have addressed to the authorities for determination of the production capacity. Obviously therefore, the appellants were not aware of the said requirement and the need to produce the copies of those letters before the authority in the matter in hand. The impugned order discloses that instead of giving such fair opportunity to the

appellants the lower authority proceeded to dispose of the matter. It is also a matter of record that such letter was sent subsequent to the personal hearing granted to the appellants.

4. The learned DR did ~~tried~~ try to contend that the appellants had failed to prove their case that they had applied for redetermination of the production capacity. He has also further contended that according to the appellants themselves such request for redetermination of production capacity was made in the year 1998 and we are already in the year 2009 and therefore, it would be difficult for the authority to decide about the quantum of production capacity with reference to the past years. As regards, the contention regarding the failure on the part of the appellants to prove the case in relation to their application for redetermination of the production capacity, undisputedly the appellants were not granted fair opportunity to prove their case in that regard as the appellants had not received the letter of the Department dated 18th of November 2008. As regards, the second contention that in case the appellants succeed in establishing that they had actually sent such letters to the Department requesting for redetermination of the production capacity, the failure in that regard on the part of Department to undertake necessary exercise on the basis of the such applications, in the facts and circumstances of the case, mere delay or merely because the Department will find it difficult to ascertain the production in the past years cannot be a justification to deny the relief to the appellants which they are otherwise entitled to have in accordance with the provisions of law. Needless to say that, all the issues are to be finally decided by the Competent Authority after giving proper opportunity to the appellants to prove their case. In the result, therefore, the impugned order is required to be set aside and the matter remanded to the Original Authority to decide the same afresh

by giving opportunity to the appellants to prove their contention regarding filing of applications for redetermination of the production capacity.

5. In the result, therefore, the appeal succeeds, the impugned order is set aside and the matter is remanded for the reasons states above. The appeal is disposed off in above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK