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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

Date 12/10/2009

Appeal No. E/1898/2009 - EX[DB]
E/S/1954/2009-EX

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

To :
M/S RAJGARH ISPAT & POWER PVT.LTD
MADHUBAN BEHIND BALRAM GARAGE,KOTRA
ROAD, DISTT- RAIGARH(CG)
M/S RAJGARH ISPAT & POWER PVT.LTD

Appellant
Vs
Respondent

C.C.E. RAIPUR

STAY ORDER NO.981/2009-EX

I am directed to transmit herewith a certified copy of **Final order No.** 772/ **2009 EX[DB]** dated 05-10-09

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 SH. M.V. GIRNIKAR, CA
C/o APPELLANT
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
17. Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1898 of 2009

(Arising out of Order-in-Appeal No. 41/RPR-I/2009 dated 02.04.2009 passed by the Commissioner of Customs & Central Excise, Raipur).

DATE OF HEARING : 05.10.2009
DATE OF DECISION : 05.10.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, 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 ?	Yes
2.	Whether it should 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 Departmental Authorities?	Yes

M/s Rajesh Ispat & Power Ltd. .... **Appellant**
(Rep by Sh. M.V. Girnikar, C.A.)

VERSUS

CCE, Raipur .... **Respondent**
(Rep. by Sh. M. Rastogi, SDR)

CORAM : **HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT**
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 772/09-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

The appeal is taken up for hearing in terms of the order passed in Stay Application No. E/1954 of 2009.

2. Heard.

3. The appellants challenge the order dated 2nd April, 2009 passed by the Commissioner (Appeals), Raipur, whereby the appeal filed by the appellants against the order passed by the original authority has been dismissed for non-compliance of requirement of pre-deposit.

4. Under order dated 27th October, 2008 passed by the Additional Commissioner, an amount of Rs. 6,17,945/- i.e 10% of the value of the goods cleared was held recoverable from the appellants along with interest in terms of Rule 6(3)(c) and Rule 14 of the Cenvat Credit Rules, 2004 read with Sections 11-A and 11-AB of the Central Excise Act, 1944 and Section 73 of the Finance Act, 1994 as also Cenvat Credit amounting to Rs. 1,67,010/- duty and education cess amounting to Rs. 2,505/- was held to have been wrongly availed by the appellants and, therefore, the said amount was held to be recoverable along with interest under Rule 14 of the Cenvat Credit Rules read with Section 11-AB of the said Act and equal amount of penalty was also imposed. The matter was carried in appeal by the appellants before the Commissioner (Appeals), Raipur. The Commissioner (Appeals) by order dated 22nd December, 2008 stayed the order passed by the adjudicating authority subject to pre-deposit of Rs. 3 lacs in terms of

Section 35-F of the said Act. The amount was required to be deposited on or before 12th March, 2009. However, the appellants failed to deposit the said amount and, therefore, under the impugned order the appeal was dismissed while exercising the powers under Section 35-F of the said Act.

5. The learned Chartered Accountant for the appellants submitted that, the Tribunal has taken a, *prima facie* view that, iron ore fines cannot be treated as a product different from iron ore and considering the facts of the case in hand which clearly disclose that the credit is sought to be denied and the amount is sought to be demanded while rejecting the similar contention which was sought to be canvassed by the appellants before the authorities below, *prima facie,* case has been made out for grant of stay of the impugned order. The contention is sought to be disputed on behalf of the Department.

6. Considering the nature of controversy in the matter in hand and as it requires to go into the materials on record, we find it necessary to dispose of the appeal itself rather than restricting our order to the stay application.

7. Since the Commissioner (Appeals) has merely disposed of the appeal on the ground of failure on the part of the appellants to comply with the order regarding pre-deposit amounting to Rs. 3 lacs, we hereby direct the appellants to deposit a sum of Rs. 2 lacs (rupees two lacs only) as pre-deposit and on such deposit being made, the Commissioner (Appeals) shall hear the appeal before it on merits. We consider that the direction to deposit a sum of Rs. 2 lacs is justified in

view of the fact that under the order passed by the adjudicating authority, apart from the issue, as to whether iron ore fine could be a product different from iron ore, it has also confirmed the demand of Rs. 1,67,010/- besides education cess amounting to Rs. 2,505/- on account of failure on the part of the assessee to produce statutory or valid document in support of their claim regarding availament of Cenvat Credit. *Prima facie,* there was no material disclosed that any fault could be found with the findings in that regard and the demand being based on materials on record. Being so, in our considered opinion, we direct the appellants to deposit a sum of Rs. 2 lacs, as aforesaid, within a period of eight weeks from today and on such deposit being made, the Commissioner (Appeals) shall hear the appeal and decide the same on merits after affording reasonable opportunity of being heard to the parties. We make it clear that we have not expressed any opinion on the merits of the case. We also make it clear that in case the appellants fail to deposit the aforesaid amount within the stipulated period, the order directing revival of the appeal before the Commissioner (Appeals) and direction to rehear the same shall stand automatically revoked and the appeal before this Tribunal shall also stand dismissed *in limine.*

8. The appeal is accordingly disposed of in the above terms.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay