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

Date 17/09/2009

Appeal No. E/2073/2009 - EX[DB]
E/S/2160/09-EX

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

To :
M/S JINDAL ALLOYS,
(A UNIT OF JINDAL ROLLING MILLS LTD.)
9TH K.M.STONE, DELHI ROAD, HISAR (HARYANA)
PIN-125006

M/S JINDAL ALLOYS, Appellant

Vs

C.C.E. ROHTAK Respondent

STAY ORDER NO. 953/09-EX.

I am directed to transmit herewith a certified copy of **Final order No. 689 2009 EX[DB]** dated 07-9-09 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. ROHTAK
   SCO NO.6 SECTOR 1, ROHTAK.
2. Adv. / Consult
   MR.K.K.GUPTA
   B-137, IIND FLOOR, RAMPRASTHA, GHAZIABAD
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,
West Block No.2, R. K. Puram, New Delhi.

COURT-I

Date of hearing/decision: 07.09.2009

Excise Appeal No. 2073 of 2009 with Excise Stay No. 2160 of 2009

[Arising out of Order-in-Original C. No. IV(16)/ 193/Tech/D-III/5159 dated 27.05.2009 passed by the Commissioner, Central Excise, Rohtak]

M/s Jindal Alloys — Appellant

Vs.

CCE, Rohtak — Respondent

For approval and signature:

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

Appearance:

Shri K.K. Gupta, Advocate for the appellant.
Shri P.K. Singh, DR for the respondent.

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 689/09-EX

STAY Oral Order No. 953/09-EX.

Per : M. Veeraiyan:

As the appeal can be decided on a very short issue, we waive the pre-deposit of duty as per the impugned order and proceed to dispose of the appeal finally.

2. Heard both sides.

3. The appellant is a manufacture of M.S. Ingots and have opted for the compounded levy scheme during the relevant period. The dispute relates to eligibility of abatement claimed by the appellant for the period from April 1998 to September 1998. The Commissioner vide impugned order dated 27.05.2009 has held that the appellant are not eligible for such abatement relying on the provisions of sub-rule 3 of Rule 96ZO of the erstwhile Central Excise Rules, 1944. Learned Advocate for the appellants submits that the said rule as it stood prior to 01.09.1997 did not allow abatement if the assessee was availing the benefit under proviso to sub section (3) or under Sub-section (4). However, he draws our attention to the amendment dated 01.09.1997 wherein rule was amended making the abatement conditional only to non availment of benefit under sub-section 4 of Section 3A of the Central Excise Act, 1944.

4. Learned DR submits that perhaps this amendment dated 01.09.1997 to Rule 96ZO(3) was not brought before the Commissioner at the time of decision and since the claim for abatement has not been considered on merits, he suggest that the matter may be remanded to the Commissioner for fresh consideration. Learned Advocate has no objection for the same but submits that a time limit may be prescribed for decision as the matter is pending for long.

5. We have carefully considered the submissions from both the sides. The Commissioner has held that the abatement is not available without taking into account the amendments brought to Rule 96ZO(3) of Central Excise Rules, 1944. We deem it appropriate to set aside the order and remand the matter to the Commissioner for deciding the matter afresh after granting reasonable opportunity of hearing to both the sides and bearing in mind the observations made by us as above. As the matter relates to the year 1998, we direct the Commissioner to decide the matter expeditiously on or before 31st March 2010.

6. We clarify that we have not expressed any views on the merits of the case.

7. Appeal is remanded in the above terms. Stay petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/