

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

Appeal No. ST/445 /2007

Date 19/02/2008

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

To :  
JINDAL STEEL & POWER LTD.  
POST BOX NO 16, KHARSIA ROAD, RAIGARH  
(CG)496001

JINDAL STEEL & POWER LTD.

C.C.E. RAIPUR

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/32/08 Customs dated 24-1-08  
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax  
*along with stay order no ST/61/08*

  
Assistant Registrar  
(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,  
TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult Sh. L.P. Sharma, Adv.

*R-163, 2nd floor  
G.K. Post-I  
New Delhi*

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg, 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
BENCH – Service Tax  
ST/S/1983/07 in ST/445/07

M/s. Jindal Steel & Power

Appellant  
Rep. by S/Sh. L.P.Asthana & A.JajuAdv.)

vs

CCE, Raipur

Respondent  
(Rep. by Shri A.Jain ,DR)

Coram : Hon'ble Mr. JUSTICE S.N.JHA, PRESIDENT  
Hon'ble Mr. T.K.JAYARAMAN, MEMBER TECHNICAL

Per Justice S.N.Jha:

Date of Decision: 24.1.08  
Final Order No. ST/32/08  
Stay Order No ST/61/08

This appeal filed by the assessee is directed against the order of the Commissioner(Appeals) dt.22.5.07 dismissing the appeal of the appellant which it had preferred against the order-in-original of the Asstt. Commissioner, for non-compliance under Section 35F of Central Excise Act,1944. It may be stated here that along with the appeal the appellant had filed application seeking stay of the order of Addl. Commissioner dt.30.10.06. The said application was heard and by order dt.19.3.07, the appellant was directed to deposit a sum of Rs.5,00,000/- (Rs. Five lakhs). It is relevant to mention that the assessee is required to pre-deposit entire amount of tax, duty etc. as the case may be, subject to the power of the appellant authority to waive the requirement of such deposit. As the appellant failed to deposit the said amount of Rs.5 lakhs and they comply

with the said order dt.19.3.07, the appeal was dismissed for non-compliance of the order on 22.5.07.

2. Having heard Ld. DR at length, we are satisfied that the order cannot be sustained and the matter is fit to go back for consideration on merit by the Commissioner(Appeals). We were taken through the circular of Central Board of Excise & Customs dt.8.10.01 wherein it was clarified that the levy of service tax extends to the whole of India including the territorial waters of India. In the instant case, service was rendered and payment was also made outside and no part of the activity took place within India or the territorial water thereof and therefore so far as the impugned part of service is concerned, the appellant is not liable to pay service tax on that portion. We are of the view that the said circular lends support to the appellant's case and the appellant had a strong prima-facie case which justified full waiver of the requirement of pre-deposit and consideration on merit.

3. Ld. DR relied upon a decision of the Hon'ble Supreme Court in the case of Honda Indu Nissan Oxo Chemicals Inds. Ltd. Vs Union of India reported in 2008(221)ELT.7 in support of the contention that the stay of waiver can be granted only in cases of undue hardship. According to him, as no case of undue hardship in the sense of economic hardship is made out, the appellants did not deserve any waiver and therefore, the Commissioner was fully justified in directing the appellant to deposit service tax to the extent of 25% of the demand. We are of the view that the observations in para 15 of

the judgment relied upon by Ld. DR have to be read alongwith the observations occurring in the earlier part of the judgment as follows:

“But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand”

4. We are of the view as mentioned above, that a prima-facie case is made out in favour of the appellant and we are, therefore, satisfied that it was entitled to complete waiver. Accordingly, the order of the Commissioner(Appeals) dt.22.5.07 as also earlier dt.19.3.07 directing pre-deposit a sum of Rs.5 lakhs are set aside and it is directed that the appeal be heard on merit without requiring the appellant to make any pre-deposit.

5. The appeal is allowed in the above terms.

It is made clear that no part of this order or observance contained herein shall be deemed to be expression of a concluded opinion of this Tribunal on merit.

Order dictated in the open Court.

(Justice S.N.Jha)  
President

(T.K.Jayaraman)  
Member Technical

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