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

Appeal No. E/667 &670/2007-SM[BR] Date 24/01/2008

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

To :
M/S SHREE PRITHVI STEELS ROLLING MILLS PVT. LTD.

B-230A, ROAD NO 9, VKI AREA, JAIPUR

2,M/S SAVITRI CONCAST LTD
F-876-877, ROAD NO.14, VKI AREA
JAIPUR

M/S SHREE PRITHVI STEELS ROLLING MILLS PVT. LTD. Appellant

Vs

C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of Final order No. 138-139/2008-SM[BR] dated 11.12.2007 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E. JAIPUR
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult SHRI. BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI-70
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 Publictions (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
(SM 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. III**

**Excise Appeal Nos. 667 & 670 of 2007 – SM (BR)**

[Arising out of the Order-in-Original No. 02/14A/06-07 dated 09/02/2007 and 01/14A/06 dated 21/12/2006 both passed by The Commissioner, Central Excise, Jaipur – I .]

For Approval and signature :
**Hon'ble Mr. P.K. Das, Member (Judicial)**

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 Department Authorities? :

yes

M/s Shree Prithvi Steels Rolling Mills Pvt. Ltd. ] Appellant
M/s Savitri Concast Ltd. ]

Versus

CCE, Jaipur Respondent

**Appearance**

Shri Bipin Garg, Advocate – for the appellant.

Shri S.L. Meena, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Shri P.K. Das, Member (Judicial)**

**DATE OF HEARING : 11/12/2007.**

Final Order No. 138-139/08-SM(BR) Dated : 11/12/07

**Per. P.K. Das** :-

Common issue is involved in these appeals and therefore both the appeals are taken up together for disposal.

2. The appellants filed these appeals against the order of Commissioner of Central Excise passed under Section 14A of Central Excise Act, 1944. The learned advocate on behalf of the appellants submits that the Commissioner of Central Excise passed the order without giving any opportunity of hearing in violation of principle of natural justice. He submits that the Hon'ble Supreme Court in the case of **Rajesh Kumar and Others vs. Deputy Commissioner of Income-Tax and Others** reported as **2006 (287) ITR 91 (S.C.)** in similar provisions under Section 142 (2A) of the Income-Tax Act, 1961 held that the assessees suffers civil consequences and any order passed by it would be prejudicial to him, principle

of natural justice must be held to be implicit. He submits that the Commissioner appointed the special auditors without giving any opportunity of hearing to the assessee which is prejudicial to them.

3. The learned DR on behalf of the revenue submits that order under Section 14A of the Central Excise Act is not appellable order. He submits that the Commissioner passed the order with the prior approval of the Chief Commissioner, which is not covered under Section 35B of the Central Excise Act, 1944. He also submits that the Hon'ble Supreme Court in the case of Rajesh Kumar and others (Supra) held that direction issued under 142 (2A) of the Income Tax Act is not appellable order.

4. After hearing both the sides and on perusal of the records, I find force in the submission of the learned DR. In terms of Section 35B of Central Excise Act, 1944 any person aggrieved by any order of Commissioner of Central Excise as an adjudicating officer, Commissioner (Appeals) may file appeal to the appellate Tribunal. It is seen that Section 14A of the Central Excise Act, 1944 provides special audit in certain

cases with the prior approval of Chief Commissioner to direct manufacturer or any person to get the accounts of his factory, office, depots, distributors or any other place may be audited by a cost accountant nominated by the Chief Commissioner. So, the impugned order/direction passed by the Commissioner with the prior approval of the Chief Commissioner is beyond the scope of Section 35B of the Central Excise Act, 1944 and is not appellable order. The Hon'ble Supreme Court in the case of Rajesh Kumar and others (Supra) observed that direction issued under Section 142 (2A) of Income Tax Act is not appellable order which is parimateria to Section 14A of the Central Excise Act, 1944. So, the appeals filed by the appellants against order under Section 14A of Central Excise Act is not maintainable before the Tribunal and accordingly both the appeals are rejected.

(Dictated and pronounced in open court)

**(P.K. Das)**
**Member (Judicial)**

PK