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
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/3670 -3671 /2006 –SM[BR] Date 12/05/2008

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

To :
(1-2) M/S BHARAT ISPAT
C/O SH BHAGWATI PRASAD,ADV, 111, HANS
BHAVAN, I, B.S.Z. MARG, N. DELHI.
110002

M/S BHARAT ISPAT Appellant

Vs

C.C.E.DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 732 -733 /2008 –SM[BR]dated 8.4.2008

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.DELHI I
   C.R. BUILDING, I.P.ESTATE, N. DELHI.
2. Adv. / Consult SHRI BHAGWATI PRASADADV.
   111, HANS BHAVAN , 1, B. S. Z. MARG.
   NEW DELHI -110002
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.3671/06, E/3670/06-SM

(Arising out of order in appeal No.239/CE/DLH/03 dated 9.6.03 and No.327/03 dated 11.8.03 passed by the Commissioner of Central Excise (Appeals), New Delhi)

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 should 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 Departmental authorities?

No

M/s Bharat Ispat — Appellant
(Rep. by Shri Bhagwati Prasad, Advocate)

Vs

CCE, Delhi-I — Respondent
(Rep. by Ms. Archna Pandey Mittal, Jt. CDR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 8.4.08

Final Order No. 732-733 /2008-SM(BR)

Per P.K. Das:

Heard both the sides and perused the records. Common issue is involved in both the appeals, therefore, these are being taken up for disposal.

2. The Commissioner (Appeals) dismissed the appeal as time barred. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"The Appellant in their appeal memorandum have declared 27th March, 2000 as the date of communication of said order, without any supporting material that order was served upon them late. As per inquiries made by the appellate forum, evidence has been brought on record that the o-in-o No.137/98 dated 12.7.98 was sent to Appellant by the officer of Adjudicating Authority under registered post vide postal acknowledgement receipt No. 1885 dated 4.8.1998 (copy on record, as received from concerned Central Excise Division) and same was never received back from postal department, undelivered to addressee/Appellant in due course. So, it can be legally presumed that the Order in Original reached the addressee-Appellant in normal course within a few days in the month of August 1998 itself."

3. After hearing both the sides and on perusal of record, it appears that the Commissioner (Appeals) passed the order without affording any opportunity of hearing to the appellants. The appellants disputed the finding of the Commissioner (Appeals) as revealed from the grounds of the appeal.

4. I find that the appellants should be given an opportunity to defend their case before passing the order. Accordingly, the order of the commissioner (Appeals) is set aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after giving proper opportunity of hearing to the appellants. The appeals are allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*