

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/1751/2006 - SM[BR]

Date 05/02/2009

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

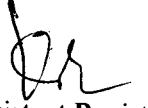
To :
CCE INDORE
P.B.NO-10, MANIK BAGH PLACE INDORE
CCE INDORE

M/S VIJAY ISPAT RE ROLLING MILLS

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 113 / 2009- SM[BR] dated 2.2.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S VIJAY ISPAT RE ROLLING MILLS

10-C, SECTOR -C SANWER ROAD, INDORE

2. Adv. / Consult

NONE;-----

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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

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 Puniabi Bagh, New Delhi - 110026

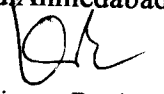
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

15 Office Conv

16 Guard file


Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.1751/2006 -SM(Br)

(Arising out of order in appeal No.Ind.I/103/06 dated 3.3.06
passed by the Commissioner of Central Excise (Appeals), Indore)

CCE, Indore

Appellant

Vs

M/s Vijay Ispat Re-rolling Mills

Respondent

Appeared for Appellant : Shri Sansar Chand, DR
Appeared for Respondent : (Rep. by none)

Date of Hearing: 9.1.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 113 /2009-~~SM~~(BR)

Per D.N. Panda:

None is present for the respondent.

2. Learned DR points out that the capacity of production was not challenged. There is nothing on record to show that there were cogent evidence and reason to grant relief to the respondent. Therefore, he prays for reversal of the order of Commissioner (Appeals).

3. Heard the learned DR and went through the order. There is nothing on record to show that capacity was actually fixed to determine the duty liability. In absence of the respondent, it is not

practically possible to ascertain whether there was any order passed to determine the capacity of production. The learned DR cites the decision of CCE Indore Vs Star Enterprises reported in 2005 (179) ELT 310. It is desirable that the learned Commissioner may peruse the record and verify whether there was any capacity determined to determine duty liability and decide the issue accordingly. The respondent should be granted fair opportunity of hearing.

4. In the result, the matter is remitted back to the learned Appellate Authority, setting aside the impugned order.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*