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

Date 26/05/2009

Appeal No. E/570 /2009 – SM[BR] E/ STAY/ 564 /2009-SM[BR]

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

To :
M/S BALAJEE STEEL INDUSTRIES ,

URLA INDUSTRIAL COMPLEX, RAIPUR, (C.G.)

M/S BALAJEE STEEL INDUSTRIES , Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No478 / 2009-SM[BR]&S/245/2009**. dated 6.5.2009

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. RAIPUR

   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult

   NONE;--------------

3 S.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

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Stay Application No.564 of 2009-SM (BR) in
In Appeal No.570 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.11/RPR-I/2009 dated 12.02.2009 passed by the Commissioner of Central Excise (Appeals-I), Raipur]

Date of Hearing/ Decision:6.5.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s. Balaji Steel Industries .....Appellants
[Rep. by None.]

Vs.

CCE, Raipur ...Respondents
[Rep. by Shri R.K. Verma, DR]

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

Final Order No. 478/09 SM (BR) /Dated:06.05.2009

Per P.K. Das: Stay order - 245/09 SM(BR)

As the issue involved in this case is in narrow compass, therefore, after granting stay, the appeal is taken up for hearing.

2. The Original Authority confirmed the demand of duty of Rs.21,610/- and imposed penalty of equal amount denying the credit on Service Tax payable by the appellant on GTA services during the period from 19.05.2005 to 15.02.2006.

3. The Commissioner (Appeals) observed that the appellants failed to produce any contract/agreement of sale between them and the buyer of the goods entailing thereunder the terms and conditions and also failed to produce any evidence that the freight charges were an integral part of the price of the goods, the Cenvat Credit had been justifiably disallowed and recovery ordered. The Hon'ble High Court in the case of Ambuja Cement Ltd. Vs. Union of India – 2009 (14) STR 3 (P&H) held that the freight charges forming part of value of excisable goods and borne by the manufacturer as sale on FOR basis, the credit on outward services is admissible.

4. In view of the decision of the Hon'ble Punjab & Haryana High Court in the case of Ambuja Cement Ltd. (supra), the impugned order is set aside and the matter is remanded back to the Original Authority to decide afresh in the light of the decision of the Hon'ble Punjab & Haryana High Court. The appellants also directed to produce the evidence in support of the contention that the goods were cleared on FOR basis. The appeal is allowed by way of remand.

5. The stay application is also disposed of.

Order dictated & pronounced in open court on 6.5.2009.

(P.K. Das)
Member (Judicial)

Ckp.