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

## CUSTOMS APPEAL BRANCH

Appeal No. ST/807 & 113/2008 - CU[DB]
ST/CO/67/2009

Date 04/08/2010

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

To :
M/S FERRO SCRAP NIGAM LIMITED.
F.S.N.L. BHAWAN, EQUIPEMENT CHOWK, CENTRAL AVENUE, POST BOX NO. 37, BHILAI, (C.G.)-490001.

M/S FERRO SCRAP NIGAM LIMITED. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/43-44 2010 CU[DB]** dated 27.07.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

**West Block No. 2, R.K. Puram,**
**NEW DELHI**

## COURT No. II

**SERVICE TAX APPEAL NO. 807/08 & 113/08 WITH ST/CO/67 OF 2009**

[Arising out of Order-in-Original No. Commissioner/RPR/73/2008 dated 28.08.2008 & Commissioner/RPR/59-63/2007 dated 28.11.2007 passed by the Commissioner of Central Excise & Customs, Raipur]

M/s. Ferro Scrap Nigam Ltd., Appellant
Reptd. By Shri B.L. Narasimhan, Advocate

Versus

CCE, Raipur Respondent
Reptd. By Shri S.K. Panda, Jt. CDR,

**Date of Hearing/decision: 27th July, 2010**

Coram: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

**FINAL ORDER NO.** ST/43-44/10 **DATED**

**Per D.N. Panda:**

Learned Counsel Shri B.L. Narasimhan submits that the order under appeal is suffering from legal infirmity for not giving any reason for decision and also being non-speaking. The Tribunal made an observation at the interim stage on 6.11.2009 that the impugned order was cryptic. Therefore, waiver of pre-deposit of service tax was granted.

2. Shri Narasimhan also submits that if the issue involved in this matter is examined properly on the settled law laid down by the Tribunal in the case of Modi Construction Co. vs. CCE, Ranchi, reported in 2008 (12) STR 34 (Tri.-Kolkata), the appellant shall have no grievance. He further submits that if the contract is examined, the respective aspect of contract shall provide appropriate basis for rational taxation. He also appreciates that the learned adjudicating authority had no occasion to go through the decision in Modi Construction Co. (supra) as that decision was rendered prior to the decision of the adjudicating authority i.e. 16.6.2008. But he submits that, there would be no difficulty for proper taxation if the matter is restored to the file of learned Adjudicating authority. Such prayer he makes in both these appeals.

2. Learned D.R. appearing of behalf of the Revenue submits that on the basis of law, if the matter is decided by the learned Adjudicating authority in both the cases

there may not be difficulty. He also submits that if Tribunal proposes for remand, there shall not be any difficulty in re-adjudication but the appellants have to provide every detail for examination.

3. Noticing that the appellant was deprived of justice by a cryptic order and also that the appellant had executed contract with public sector undertaking namely SAIL of Bhilai, there may not be difficulty to examine the records and to come to an appropriate conclusion by a reasoned and speaking order. We do appreciate the difficulty of authorities below in early stage of taxation on the point of cargo handling service which is clear from the efforts made by the authorities to analyse the same.

4. To resolve the issue properly and also to expect a reasoned and speaking order examination of the contract dealing neatly the aspects of taxation, it would be proper to remit the matter to the learned adjudicating authority. If a reasoned and speaking order is passed that may not give rise further grievance by the appellants. Learned adjudicating authority shall have advantage to go through the decision in the case of Modi Construction Co.

(supra) and decision in B.S.B.K. of the Larger Bench reported in 2010 (18) STR 555 (L.B.) and decide both the appeals in accordance with law.

5. Having noticed that huge amount is involved, we prefer that re-adjudication order should be passed within 6 months of receipt of this order. Reasonable opportunity of hearing should be granted to the appellant before passing the order.

6. In view of the disposal of both the appeals as above, cross objection No. 67/2009 in appeal No. ST/807/08 is also disposed off.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK