

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

Date 30/06/2011

Appeal No. E/1216/2009 – SM[BR]

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

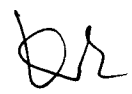
To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR

Appellant
Vs
Respondent

M/S STEEL AUTHORITY OF INDIA LTD.

I am directed to transmit herewith a certified copy of Final order No. 357 / 2011-SM[BR]
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 23.6.2011


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S STEEL AUTHORITY OF INDIA LTD.
BHILAI STEEL PLANT, BHILAI
(C.G)

2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-29.

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8, Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Excise Appeal No.1216 of 2009

(Arsing out of Order-in-Appeal No.65/RPR-II/2008 dated
24.11.2008 passed by the CCE (A),Raipur)

For approval and signature:

Hon'ble Mr.M.Veeraiyan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s.CCE, Raipur

Appellants

Vs.

M/s.Steel Authority of India Ltd.

Respondent

Present for the Appellant: Shri K.P.Singh, SDR

Present for the Respondent: Shri Hemant Bajaj, Advocate

Coram: Hon'ble Mr. M.Veeraiyan, Member (Technical)

Date of Hearing: 23.06.2011

Date of Decision: 23.06.2011

Final ORDER NO. 357/2011 SM(BR)

PER: M.VEERAIYAN

Heard both sides.

2. The original authority denied the credit of Rs.8,65,117/- and imposed penalty of Rs.50,000/-. The original authority passed the

ex-parte order against the respondents as the respondents failed to furnish reply inspite of ample opportunity given and did not appear for personal hearing which was fixed after specific request for adjournment on the earlier date of hearing. The appellants filed appeal before the Commissioner (Appeals) and made elaborate submissions on the factual position in support of claim of credit. The Commissioner (Appeals) remanded the matter with the following the findings and observations:

"6 I have carefully gone through the facts of the case and the submissions on record. It is quite evident from the findings contained in the Order impugned that the lower authority has recorded his findings without seeking any reply from the appellant, and without examining the merits of the case. The appellants have submitted in their grounds of Appeal that proper opportunity to submit the documents and information has not been provided to hem and the case has been decided on ex-parte basis. Prima facie, I find that an opportunity ought to have been granted to them to file their written submissions and/ or appear for personal hearing.

7. Since the submissions of the Appellant have now been enumerated in the aforesaid grounds of Appeal, it would be just and proper to remit the case to the lower authority to re-determine the issues afresh after granting an opportunity to the Appellant to present their case in person."

3. Learned SDR submits that the Commissioner(Appeals) has no power of remand after amendment to section 35A with effect from 11.5.2001 deleting the power of remand as settled by the Hon'ble Supreme Court in the case of Mil India Ltd. vs. CCE, Noida reported in 2007 (210) ELT 188 (SC).

4. Learned Advocate for the respondents concedes that there was delay in submitting reply before the original authority and seeks another opportunity for establishing their claim of eligibility of cenvat credit.

5. The conduct of the respondents during adjudication proceeding cannot be appreciated. It is clear from the records that inspite of ample opportunity given, they have failed to submit reply and did not appear for personal hearing. Under these circumstances, ex-parte order stands passed by the original authority. It appears that they filed detailed submission before the Commissioner (Appeals) and he has held that the same require factual verification and therefore remanded the matter to the original authority. However, it is settled law that the Commissioner (Appeals) has no power of remand after 11.5.2001, and therefore the order of the Commissioner (Appeals) cannot be allowed to survive.

6. However, I am of the view that the grounds on which the Commissioner (Appeals) wanted the matter to be considered by the original authority afresh are valid. In view of the above, I set aside the order of the Commissioner (Appeals) and the order of the original authority insofar as the same related to denial of cenvat credit to the respondents and remand the matter to the original authority for fresh consideration.

7. It is directed that the respondents shall file reply within 45 days from today and appear before the original authority at 11 a.m

on 18.08.2011 and on any other day as may be directed by him.
The original authority shall pass the order preferably on or before
31.10.2011.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

mk