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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/1078/2009 – SM[BR] E / CO / 182 / 2009 –SM[BR] Date 07/12/2010

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

M/S JINDAL STEEL & POWER LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1370 / 2010-SM[BR] dated 25.11.2010 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 JINDAL STEEL & POWER LTD.,
   P.B.NO.16, KHARSIA ROAD, RAIGARH (C.G.)
2. Adv. / Consult SHRI L.P. ASTHANA ADV.
   R-163, IIND FLOOR G.K. PART-I,
   NEW DELHI-48.

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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 1078 of 2009-SM(BR)
Excise Cross Objection No. 182 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 16/RPR-I/ 2009 dated 12.2.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur]

For approval and signature:

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

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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

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Commissioner of Central Excise
Raipur — Appellants

Vs.

M/s. Jindal Steel and Power Ltd. — Respondent

Appearance:

Shri K.P. Singh, SDR for the Appellants
Ms. Reena Khair and Ms. Neha Gulati, Advocates for the Respondent

Date of Hearing/decision : 25.11.2010

Final **ORAL ORDER NO. 1370/2010 SM(BR)**

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 16/RPR-I/ 2009 dated 12.2.09 .

2. Heard both sides.

3.1 Show cause notice dated 30.4.03 was issued proposing to deny Cenvat credit on capital goods used in old and new power plant being installed by the respondents. Original authority vide order dated 12.2.09, taking note of the decision of the CESTAT on the same issue in respect of the same respondent for earlier period, dropped the proceedings initiated by the show cause notice.

3.2 The relevant portion of the order of the original authority is reproduced below:

> "6. It is a fact that the credit involved in identical cases for earlier periods was allowed by the Hon'ble CESTAT, New Delhi by their Final Order No. A/452/03-NBC dt. 05.09.03 rejecting the departmental appeal against Orders in Original No. 279-284/CH.72, 73,74,84 & 85/COMMR/2001 dt. 29.08.01 passed by the Commissioner, Central Excise, Raipur. It was held that the Modvat credit cannot be denied as the power plant installed is a part of their expansion plant to enhance the production capacity of sponge iron, steel and Ferro alloy for which enhanced power will be required by them. Though the final order of the CESTAT in appeal No. E/2830/2002-NBC referred to above has not been accepted by the department and an appeal has been filed before the Hon'ble High Court of Chhattisgarh, Bilaspur vide provisional No. 872/2004 dt.

31.03.04, which is yet to be decided. Until the order of the CESTAT is reversed by the Hon'ble High Court, its ratios are applicable to present cases also. These cases are already over delayed; hence, the proceedings cannot be prolonged anymore."

4. Department filed appeal against the order of the original authority inter alia taking the grounds that the department has not accepted the order dated 5.9.03 of the Tribunal and that order the department has preferred appeal before the Hon'ble High Court of Chhattisgarh. Commissioner (Appeals) after noting the above submissions has not given any reasoning as to why he chose to interfere with the order of the original authority which merely followed the CESTAT order.

5. The present appeal by the department challenges the order of the Commissioner (Appeals) in remanding the matter to the original authority on the ground that subsequent to amendment of section 35A(3) with effect from 11. 5.01 by the Finance Act, 14/01, the Commissioner (Appeals) has no power to remand. The department also relies on the decision of the Apex Court in the case of MIL India vs. CCE, NOIDA reported in [2007 (210) ELT 188 (SC)] wherein it has been held that after amendment to section 35A with effect from 11. 5.01, the Commissioner (Appeals) has no power to remand.

6. In view of the above, I accept the contention of the department that Commissioner (Appeals) has no power to remand consequent to amendment to section 35A(3) of the Central Excise Act, with effect from 11.5.2001. Further, I do not find any valid reasons for the original authority to

reconsider the issue when he has followed the decision of CESTAT which has not been set aside or stayed by any higher forum.

7. In view of the above, the appeal of the department is allowed and order of the Commissioner (Appeals) is set aside and the order of the original authority, which is incidentally in favour of the respondent, is restored.

8. Cross Objection which is basically in support of the order of the Commissioner (Appeals) is also disposed of.

(M. Veeraiyan)
Member(Technical)

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