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

Appeal No. E/892 /2009 – SM [BR] Date 20/12/2010

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

To :
M/S EXIDE INDUSTRIES LTD.
PLOT NO. 179, SECTOR-3, HSIDC GROWTH CENTRE,
BAWAL-1235001,
DISTT: REWARI, HARYANA.

M/S EXIDE INDUSTRIES LTD. Appellant
Vs
C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1441 / 2010-SM[BR] dated 26.10.2010 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. DELHI III
UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
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
(SM Appeal Branch)

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

Excise Appeal No.892 of 2009
Excise Cross Objection No.163 of 2009
(Arising out of Order-in-Appeal No.01/ANS/GGN/2009 dated 1.1.09 passed by the CCE (A), Delhi-III, Gurgaon)

Date of Hearing: 26.10.2010
Date of Decision: 26.10.2010

For approval and signature:
Hon'ble Mr.Ashok Jindal, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Excide Industries Ltd. Appellant
Vs.

CCE, Delhi-III Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 1441/2010 SM (BR)

PER: ASHOK JINDAL

The demand against the appellants has been confirmed on the ground that the appellants have not received back the goods sent to their job worker for processing within 180 days of issue to the job worker.

2. The facts of the case are that the appellants are manufacturer of parts. They sent lead dross to the job worker for processing and after processing they have received back lead

ingots and the remaining waste they did not receive in their factory and on that ground the adjudicating authority has confirmed duty demand alongwith interest and equal amount of penalty. Aggrieved by this order, the appellants have filed this appeal.

3. Learned Advocate appearing for the appellants submits that the appellants are engaged in the activity of manufacturing of the parts. In their manufacturing process, they used to send lead dross to their job workers out of that job work lead contents sent back to the appellants, the remaining contents being waste they have been destroyed at the job worker's end, which they have never received in their factory. The department has alleged that they have not received back the inputs sent to their job worker in full, the demand has been raised for the balance quantity which they have not received. He drew my attention to the show cause notice where such allegation has been made. The allegation against the appellants is that the job worker has not mentioned generation of waste and scrap or process of loss on the copies of the challan received from them accompanying the said challan. Further, it was also alleged by them that the job worker' resgister maintained by them is also silent about the waste and scrap any type of process loss. He has also produced the copy of challan under which the goods were sent to the job worker for processing and their job worker' register for perusal and submitted that they have duly entered in the job worker register and in the challan for generation of said waste but the demand has been confirmed only on the ground that the appellants have not received back

full quantity of the inputs sent to the job worker and confirmed the demand for balance quantity of inputs which they have not received back in the factory which is not sustainable in the facts and circumstances of the case.

4. On the other hand, Learned SDR submits that the appellant have neither replied to the show cause notice nor appeared before the adjudicating authority. The adjudicating authority could not examine their job worker's challan and register and the adjudicating authority confirmed the demand.

5. Heard both sides.

6. I have examined the submissions made by both sides. I find that the allegation against the appellants is that the job worker has not mentioned the generation of waste and scrap or process loss on the copies of challan received back from them accompanying deliver challan issued by the job worker and the register maintained by the job worker. I have also examined the job worker challan wherein it has been mentioned that balance material is hazardous waste in the form of slag and ash having no commercial value and in the job worker's register it has been clearly shown the quantity of waste material which they have not received back from the job worker. Hence, the allegations in the show cause notice are not sustainable when there is fact on records. Accordingly show cause notice is not warranted in this case. When the show cause notice is not warranted, no demand is sustainable.

7. With these observations, I do not find any merits in the confirmation of demand, the same are rejected. The appeal is allowed with consequential relief as per law.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

mk