

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/2574/2008 – SM[BR]

Date 04/03/2010

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

To :
M/S PANKAJ OXYGEN LIMITED

FACTORY AT 615,URLA INDUSTRIAL COMPLEX,
RAIPUR,CG

M/S PANKAJ OXYGEN LIMITED

Appellant

Vs
Respondent

C.C. RAIPUR

I am directed to transmit herewith a certified copy of Final order No. 269 / 2010 –SM[BR] dated 26.2.2010
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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

MR.S.N.SINHA MAHAPATRA

27/33, K.M. NASKAR ROAD, REGENT PARK P.O., KOLKATA

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 Publications 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 (Harvana)

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 2574 of 2008-SM

(Arising out of Order-in-Appeal No. 85/RPR-I/2008 dated 31.7.2008
passed by the Commissioner (Appeals), Central Excise & Customs,
Raipur)

M/s Pankaj Oxygen Ltd.

Appellant

Vs.

CCE, Raipur

Respondent

Date of Hearing: 22.2.2010

Appearance :

Appeared for Appellant - None
Appeared for Respondent - Shri S.N. Srivastava, SDR

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

final Order No. 269/2010 SM (B2) dated.....

Per D.N. Panda:

Ld. DR Shri Srivastava has no difficulty if the matter in
controversy is decided in terms of judgment of the Tribunal in the
case of **Vikram Cement Vs. CCE** reported in 2009 (242) ELT 545
(Tri.-Del.) and subsequent decision in the case of **Kisan Sahkari
Chini Mills Ltd. Vs. CCE** reported in 2010 (96) RLTONLINE 141.
Shri Srivastava also cites that the decision of the Larger Bench in

- the case of **Jaypee Rewa Plant Vs. CCE** reported in 2003 (159) ELT 553 shall be equally applicable to deny the claim of Cenvat credit on the respect input.

2. None present for the appellant. In absence of the appellant, it would not be proper to dismiss the appeal when the stay order has already been *passed* in this case on 6.2.2009 staying recovery and waiver of pre-deposit against the duty demand of Rs.2,839/- and penalty of Rs.2000/-. Since Revenue has the proposition that the matter in controversy has recurring effect, it should be tested by the Id. Adjudicating Authority and appropriate order passed. This appeal is *accordingly* remanded to the Id. Adjudicating authority to test the facts of case in the light of the aforesaid three judgements granting fair opportunity of hearing to the appellant.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM