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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/5230/2004 - EX[DB] Date 23/09/2010

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
JINDAL STEEL & POWER LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 657/**2010 EX[DB]** dated 18-8-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   JINDAL STEEL & POWER LTD
   KHARSIA ROAD, RAIGARH(CG)
2. Adv. / Consult
   MR.L.P. ASTHANA & MS REENA KHAIR
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
3. C.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
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 18.8.2010

Central Excise Appeal No.5230 of 2004

Arising out of the order in appeal No.154/RPR-1/2004 dated 29.6.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

C.C.E., Raipur ... Appellants

Vs.

M/s Jindal Steel & Power Ltd. .... Respondent

Appearance:

Shri V. Chaudhary, Authorized Departmental Representative (SDR) for the Revenue and Shri A. Jaju, Advocate for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 657/10-EX.

Per Justice R.M.S. Khandeparkar:

Heard the SDR for the appellant and the learned Advocate for the respondents.

2. This appeal arises from the order dated 29.6.2004 passed by the Commissioner (Appeals), Raipur. By the impugned order, the appeal filed by the assessee was allowed against the order passed by the adjudicating authority.The adjudicating authority namely, the Additional Commissioner, Raipur, by his order dated 19.1.2004 had disallowed the cenvat credit of Rs.30,11,938/- availed on explosives by the respondents during the period

from August, 2002 to March, 2003 and had ordered recovery thereof, along with interest.

3. When this appeal had come up for hearing on 4.4.2004, the Tribunal set aside the order of the Commissioner (Appeals) holding that the respondents were not entitled for the benefit of the cenvat credit. The matter was carried in Excise Appeal No.10 of 2005 before the High Court of Chhattisgarh and by their order dated 17.11.2009 relying upon the decision of the Apex Court in the matter of Vikram Cement vs. C.C.E., Indore reported in 2006 (194) ELT 3 set aside the order of the Tribunal and remanded the matter for reconsideration.

4. Perusal of the records and in particular, the order of the adjudicating authority disclose that the benefit of cenvat credit availed on the explosives was sought to be denied on the ground that the explosives were not used within the factory of production. It appears that the Tribunal while setting aside the order passed by the Commissioner (Appeals) had taken the same view on the basis of the decision of the Apex Court in the mater of C.C.E., Jaipur vs. J.K. Udaipur Udyog Ltd. reported in 2004 (171) ELT 289.

5. Apex Court, however, in the later decision in the matter of Vikram Cement has taken different view while doubting the view taken in the matter of J.K. Udaipur Udyog Ltd.

6. Considering the facts of the matter in hand, it cannot be disputed that the case is fully covered by the decision in the matter of Vikram Cement. The view taken by the lower authority cannot be found fault with. Hence there is no case for interference in the impugned order and therefore, the appeal is dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/