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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/97 /2010 - EX[DB] WITH E/S/80/2010-EX
E/131/2010-EX WITH E/S/115/2010-EX

Date 09/07/2010

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

To :
M/S JALAN CASTINGS PVT. LTD.
MOHARIPUR, NAUTANWA ROAD, GORAKHPUR
(U.P.)

M/S JALAN CASTINGS PVT. LTD. Appellant
Vs
C.C.E ALLAHABAD STAY ORDER NO. 450-51/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 435-436/ 2010 EX[DB] dated 25-6-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
MR.AMIT AWASTHI
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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
17. M/S. JALAN ALLOYS LTD.
BORING NO.-10, INDL. ESTATE,
GORAKHPUR

Assistant Registrar
(Excise Appeal Branch)

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

Date of Hearing/Decision: 25.06.2010

Excise Stay No. 80 of 2010 in Excise Appeal No. 97 of 2010

M/s Jalan Castings Pvt. Ltd. — Appellants

Vs.

CCE, Allahabad — Respondent

AND

Excise Stay No. 115 of 2010 in Excise Appeal No. 131 of 2010

M/s Jalan Alloys Limited — Appellants

Vs.

CCE, Allahabad — Respondent

Present for the Appellants : Sh. Amit Awasthi, Advocate
Present for the Respondent : Sh. R.K. Verma, DR

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY **Oral Order No.** 450-451/10-EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard. Considering the facts disclosed, we find it appropriate to dispose of the appeals themselves at this stage and, therefore, the applications are allowed without insisting for deposit and registry is directed to place corresponding appeals for final disposal forthwith. Applications are accordingly disposed of.

(Justice R.M.S. Khandeparkar)
(President)

(Rakesh Kumar)
Member (Technical)

Pant

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/ decision: 25.06.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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?	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?	Y

Excise Appeal No. 97 of 2010
[Arising out of order F. No. VI(72) 269/97/X-2/10879 dated 28.10.2009 passed by the Commissioner, Central Excise, Allahabad].

M/s Jalan Castings Pvt. Ltd. — Appellants

Vs.

CCE, Allahabad — Respondent

AND

Excise Appeal No. 131 of 2010
[Arising out of order F. No. VI(72) 269/97/X-2/10879 dated 28.10.2009 passed by the Commissioner, Central Excise, Allahabad].

M/s Jalan Alloys Limited — Appellants

Vs.

CCE, Allahabad — Respondent

Present for the Appellants : Sh. Amit Awasthi, Advocate
Present for the Respondent : Sh. R.K. Verma, DR

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

FINAL Oral Order No. 435-436/10-Ex

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and learned DR for the respondent.

2. Since common questions of law arise in both the appeals they were heard together and are being disposed of by this common order.

3. The Tribunal by its order dated 12.01.2004 passed in Excise Appeal Nos. 2958 & 2959 of 2003 had set aside the orders passed earlier by the Commissioner determining the Annual Production Capacity of the appellant's unit and had remanded the matter with the following directions:-

> "6. In view of our observations recorded above, we have no option but to remand the matter, once again, to the Commissioner of Central Excise, directing him to take a fresh decision in the case of each of these appellants after examining their plea of merger of companies based on the letter dated 20.11.03 of M/s G.A. Danieli India Ltd. (which we have reproduced above) and, in the event of such merger being established, considering the certificates of M/s G.A. Danieli India Ltd. under sub-rule (1) of Rule 3 of the ACD Rules. If the Commissioner has allowed reductions in radius and depth of similar furnace crucibles due to lining and patching thickness, to others as claimed by the appellants in their letter dated 3.4.98, he shall also consider the appellants' alternative request contained in the said letter while determining their ACP. The impugned orders are set aside and the appeals are allowed by way of remand. It goes without saying that the parties shall be given a reasonable opportunity of being heard".

4. Accordingly, the learned Commissioner after hearing the parties and while considering the point as to whether annual capacity of production in case of appellant's unit was to be determined on the basis of formulae given in Rule 3(2) of the Induction Furnace Annual Capacity Determination Rules,

1997 by allowing the tolerance as allowed in the case of M/s Govind Mills held thus:-

> "The CESTAT in decision dated 19.1.2004 has held that the ACP should be fixed on the basis of certificate given by the manufacturer of furnaces. It was therefore erroneous to reject the certificate of manufacturer in the first instance. In fact that the certificate produced bearing different dates has been reasonably explained by the assessee. The certificate did not show the specification of the furnaces originally becomes such specifications were immaterial at that time as duty was paid advelorum and the compounded levy scheme was till then not introduced. Duty becomes payable under compounded levy scheme on the basis of ACF w.e.f. 1.9.97 and it was only then that the parameters of the furnace become material for the Central Excise Department. The assessee therefore obtained the certificate dated 21.4.98 showing the parameter of the furnaces in question from manufacturer of the furnaces. The original doubt that M/s G.A. Danieli India Ltd. was not the manufacturer of furnaces has been adequately answered by showing that M/s G.A. Danieli India Ltd. is successor company of M/s GEC Alstom Ltd. Calcutta. Therefore it is competent to give the required certificate. The veracity of these certificates has been confirmed".

Having held as above, the Commissioner disposed of the matter with the following order:-

> "In view of discussions above, the certificate of parameters given by the manufacturer is accepted. The ACP is to be fixed on the basis of the certificate as provided under Rule 3(1) of the A.C.D. Rules. The Show Cause Notice is accordingly disposed of".

5. It is the contention on behalf of the appellants that pursuant to the said order, the appellants have been after the Department for finalization of mathematical calculation in relation to the annual production capacity and the appellants unit in terms of the said order of the Commissioner dated 29.07.2004. However, the Department did not carry out any such calculation and the appellants were surprisingly served with the impugned order dated 28.10.2009 re-determining of the annual production capacity. Indeed the impugned order reads thus:-

> "Vide this office letter C. No. VI(72) /97/X-3/2444-45 dated 21.03.98 determination of Annual Capacity of Production (ACP) of Induction Furance and Monthly Duty Liability (MDL) of the Unit effective from

01.09.97, in terms of erstwhile Sec. 3A of the Central Excise Act, 1944 read with Induction Furnace Annual Capacity Determination Rules, 1997, was conveyed to the party i.e. M/s Jalan Castings (P) Ltd., Gorakhpur.

2. Later on, the aforesaid party submitted invoices for determination ACP and MDL. Since invoices did not have details of radius and depth of the crucible relevant for purpose of determination of ACP and MDL, the party submitted Certificates dt. 21.4.1998 of M/s G.A. Danieli India Ltd. Calcutta which was subsequently accepted by the then Commissioner, Central Excise Allahabad vide his Order-in-Original No. MP(Dem 87/2004) 26 of 2004 dt. 29.7.04.

3. Accordingly, on the basis of measurement of radius and depth of crucible, as accepted by the then adjudicating authority i.e. 19" & 44.5" respectively, ACP & MDL is determined after allowing admissible abatement towards lining and patching which were earlier allowed to the party taking consideration of relevant factors. Further, the density of molten metal as per Book "The Encyclopedia of Chemistry (IIIrd Edition) Edited by Cliffoard 'A' Hampel and Gessner 'G' Hanely" is taken which is standard.

4. Accordingly, after taking into consideration of above facts/ figures, the ACP & MDL of the unit is re-determined as under:-

ACP: 43174.720 MT
MDL: Rs. 22,48,868/-

(w.e.f. 1.09.97 to 31.08.98 i.e. the period under which party worked under Sec. 3-A of the Act)".

6. A plain reading of the order of the Commissioner passed on 29.07.2004 and the impugned order dated 28.10.2009 apparently discloses that the authority while passing the impugned order has clearly ignored the findings which were arrived at by the Commissioner while passing the order dated 29.07.2004.

7. Learned DR has fairly submitted that the impugned order does not disclose the basis on which the Commissioner came to a conclusion to some extent contrary to the findings arrived at by the Commissioner in his earlier order. As rightly submitted by the learned Advocate for the appellants consequent to the order dated 29.07.2004 only exercise which the Department was required to carry out was mathematical calculation in terms

of the findings arrived at and order delivered by the Commissioner on 29.07.2004 and not to re-determine the annual capacity as has been sought to be done under the impugned order. On this ground alone the impugned order cannot be sustained and is liable to be set aside and matters are to be remanded for carrying out the required exercise in terms of order dated 29.07.2004. The appeals are accordingly disposed of with the above direction.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/