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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/1053 & 1055 / 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 ASHOK ISPAT UDYOG, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1343 – 1344 / 2010-SM[BR] dated 23.11.2010 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 ASHOK ISPAT UDYOG,
215, SECTOR-C, URLA INDUSTRIAL AREA, RAIPUR (C.G.)
2. Adv. / Consult SHRI S. VYAS ADV.
P-13, SECTOR12, NOIDA-201301.

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)

2. M/S ASHOK ISPAT UDYOG,
215, SECTOR-C, URLA INDUSTRIAL AREA, RAIPUR[C.G.]

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.1053 & 1055 of 2009-SM

(Arising out of Order-in-Appeal No.18/RPR-I/2009 & No.17/RPR-I/2009 dated 16.2.2009 passed by the CCE(A), Raipur)

Date of Hearing/Decision: 23.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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?	NO
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?	No

CCE, Raipur — Appellant

Vs.

M/s.Ashok Ispat Udyog — Respondent

Present for the Appellant : Shri R.S.Meena, SDR
Present for the Respondent: Shri S.Vyas, Advocate

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

Final **ORDER No.** 1343-1344/2010 SM(BR)

PER: M.VEERAIYAN

These two appeals filed by the department are against two orders passed by the Commissioner (Appeals) involving the same respondent and dealing with the same issues.

2. Heard both sides.

3. The respondents are manufacturers of M.S.Ingots, Round, TMT Bar, Flat, Angle of iron and steel falling under chapter 72 of CETA, 1985. They availed credit of duty paid on M.S.Angle, M.S.Channel,

M.S.Plates, cement, and CTD Bars. The show cause notices were issued alleging that the said items could neither be treated as inputs nor as capital goods and accordingly proposing the demand of duty and proposing imposition of penalty. The original authority confirmed the demand alongwith interest and imposed equal amount as penalty. The Commissioner (Appeals) after giving his finding on merits remanded the matter to the original authority for conducting factual verification and leaving issues of actual demand of duty and actual amount of penalty to the original authority. The main challenge by the department is on the ground that the Commissioner (Appeals) has no power to remand the matter after amendment to Section 35A(3) with effect from 11.5.01 by the Finance Act 14 of 2001. Learned SDR also relies on the decision of Hon'ble Supreme Court in the case of MIL India vs. Union of India reported 2007 (210) 188 and subbmits that with effect from 11.5.2001 the power of remand has been taken away from the Commissioner(Appeals). Prayer of the department is for setting aside the order of the Commissioner (Appeals) on this ground.

4.2 Learned SDR submits that the order of the Commissioner (Appeals) may be set aside and the matter may be remanded to the Commissioner (Appeals) for his consideration the case on merits and in the light of the decision of the Lager Bench of the Tribunal in the case of Vandana Global reported in 2010 (253) ELT 440.

5. Learned Advocate for the respondents has no objection to this proposal.

6. In view of the above, accepting the prayer of the department, I set aside the order of the Commissioner (Appeals) and remand the matter to him to decide the appeal after granting a reasonable

opportunity of hearing to both sides. The Commissioner (Appeals) shall also consider the submission of the respondents regarding actual use of the impugned items.

7. The appeals are allowed by way remand.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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