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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/687 /2010 - EX[DB] WITH E/S/711/2010-EX Date **15/06/2011**

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

To :
M/S. HIRA FERRO ALLOYS LIMITED(UNIT-II)
PLOT NO.567B, 568 & 553B, URLA INDUSTRIAL
COMPLEX, RAIPUR (C.G.)

M/S. HIRA FERRO ALLOYS LIMITED(UNIT-II) Appellant
Vs
C.E. RAIPUR Respondent

STAY ORDER NO. 638/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.487/ 2011 EX[DB]** dated 10-6-11 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.
2. Adv. / Consult SH. RUENDER SINGH, ADV, DSK LEGAL, 21-UGF, ANTRIKSH BHAWAN, K.G. MARG, N. DELHI
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. 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:10.6.2011

Stay Application No.711 of 2010 in
Central Excise Appeal No.687 of 2010

Arising out of the order in original No.Commissioner/RPR./3/2010 dated 7.1.2010 passed by the Commissioner, Central Excise & Customs, Raipur (C.G.).

M/s Hira Ferro Alloys Limited ... Appellants

Vs.

C.C.E., Raipur (C.G.) .... Respondent

Appearance:

Shri Rupender Singh, Advocate for the appellants
Shri R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

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

STAY Oral Order No. 638/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. Since we propose to dispose of the appeal itself, the application is disposed of without insisting for pre-deposit while directing the registry to place the appeal for final hearing. Application stands disposed of.

(Justice R.M.S. Khandeparkar)
President

Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision:10.6.2011

Central Excise Appeal No.687 of 2010

Arising out of the order in original No.Commissioner/RPR./3/2010 dated 7.1.2010 passed by the Commissioner, Central Excise & Customs, Raipur (C.G.).

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 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 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

M/s Hira Ferro Alloys Limited ... Appellants

Vs.

C.C.E., Raipur (C.G.) .... Respondent

Appearance:

Shri Rupender Singh, Advocate for the appellants
Shri R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

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

FINAL Oral Order No. 487/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. This appeal was heard pursuant to the order passed today in Stay Application No.711 of 2011.

2. This appeal arises from the order dated 7/11-1-2010 passed by the Commissioner, Raipur. By the impugned order, the Commissioner has confirmed the demand of duty to the tune of Rs.10,91,027/- along with interest and equal amount of penalty.

3. The issue involved in the matter is whether the buyers to whom the appellants cleared the excisable goods were related persons in terms of Section 4 of the Central Excise Act, 1944 and therefore, the demand of duty was justified as made in the show cause notice dated 3.3.2009 issued to the appellants. Though the impugned order is sought to be challenged on various grounds , it is not necessary to deal with those grounds and suffice to refer to only one ground namely the failure on the part of the Commissioner to take into consideration the facts on records before saddling the appellants with demand of duty.

4. Bare perusal of the impugned order discloses that in para 7 , the Commissioner has rightly formulated the issue which arises for consideration in the matter. However, from para 7 onwards till para 10.2, we do not find any consideration of the facts of the case. All those paras merely refer to the provisions of law. The Commissioner has not analysed the facts of the case in order to ascertain whether the provisions of law are applicable to the same and , if so, in what manner. In order to impose the duty liability against the assessee, it is not sufficient for the adjudicating authority merely to refer to the provisions of law. Primarily, he has to consider the facts and thereupon apply the correct provision of law to these facts and this exercise by the adjudicating authority should be apparent on the face of the order itself.

5. As already observed above, the Commissioner has totally failed in taking into consideration the facts of the case and therefore, the impugned order is liable to be set aside and the matter remanded to the Commissioner to decide afresh after hearing the parties in accordance with the provision of law bearing in mind the observation made herein above. We make it clear that we have not expressed any opinion on the merits of the case.

6. Appeal succeeds on the above limited ground. Accordingly, the impugned order is set aside and the matter is remanded as above. Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

Rakesh Kumar)
Technical Member

scd/