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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/699 /2010-701 /2010 - EX[DB] WITH E/S/724-726/10 & E/CO/159/10 341/2010-EX Date 12/05/2011

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

To :
M/S KALINDI ISPAT PVT. LTD.
PLOT NO. 11,12,13, & 14, SECTOR-B, SIRGITTI
INDUSTRIAL AREA, BILASPUR (C.G.)-495001

M/S KALINDI ISPAT PVT. LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.**420-422/ 2011 **EX[DB]** dated 25-4-11 STAY ORDER NO. 543-545/2011-EX.
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
MR.A.K.MISHRA, CONSULTANT,
1, CSC-6, 1ST FLOOR, BEHIND SHAKTI APPARTMENTS, SECTOR-9, ROHINI,
DELHI-110085

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 (Harvana)
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

P.T.O. -2

15. SHRI AKHILESH SINGHANIA, DIRECTOR OF
M/S KALINDI ISPAT PVT. LTD. , PLOT NO. 11,12,13, & 14,
SECTOR-B, SIRGITTI INDUSTRIAL AREA, BILASPUR (C.G.)-495001

16. SHRI ANAND SINGHANIA, DIRECTOR OF
M/S KALINDI ISPAT PVT. LTD. , PLOT NO. 11,12,13, & 14,
SECTOR-B, SIRGITTI INDUSTRIAL AREA, BILASPUR (C.G.)-495001

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. I

Date of Hearing : 25.4.2011

Excise Appeal No. 699-701 of 2010 with Excise Stay No. 724-726 of 2010 & Cross-Objection 159 with Condonation of Delay No.341 of 2010

[Arising out of common Order-in-Original No. COMMISSIONER/RPR/04/2010 dated 19.1.2010 passed by the Commissioner of Central Excise, Raipur]

Coram:
Hon'ble Shri Justice R. M. S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Kalindi Ispat Pvt. Ltd. — Appellants
Shri Anand Singhania, Director
Shri Akhilesh Singhania, Director

Vs.

CCE, Raipur — Respondent

Appearance:

Appeared for Appellant : Shri A.K. Mishra, Consultant
Appeared for Respondent : Shri S.R. Meena, DR

Coram:

Hon'ble Shri Justice R. M. S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. 420 - 428/2011-EX dated............
STAY Order No. 543 - 545/2011-EX

Per Mathew John:

In this proceeding three Appeals arising from the same adjudication order dated 17-05-2010 are being considered. The main Appellant is M/s Kalindi Ispat Pvt. Ltd. The other two appeals are by two Directors of this company. The matter relates to shortages in stock of finished goods namely Sponge Iron found during physical verification of stock conducted by officers of central excise department on 22nd and 23rd of Sep. 2008. Show cause Notice was issued on 26-03-2009.

2. The Appellants filed replies and asked for personal hearing. Opportunities for personal hearing were given on 21-08-2009 and 27-10-2009. The Appellants sought adjournments vide letter dated 16-08-09 and 26-10-2009 respectively. Thereafter date for personal hearing was fixed on 10-12-2009. The Appellants submit that their representative went to the office of the Commissioner to request for one more adjournment as a last chance. However the Commissioner was not in the office. The representative was informed that the Appellants would be informed about the next date of hearing by post. However the Commissioner proceeded to adjudicate the case without giving any further opportunity for hearing. The plea of the Appellants is that natural justice has been denied to them since they were not given an opportunity to explain their defense.

3. The Commissioner has recorded in his adjudication order that on 10-12-2009 nobody attended the personal hearing or requested for any adjournment.

4. Because there was difference in the versions of events on 10-12-2009 as given by the adjudicating authority and the Appellants, the adjudicating authority was asked to file an affidavit as to whether he was present in the office on the forenoon of 10-12-2009. From the affidavit filed it is seen that on that day he returned from Bhopal to Raipur and reached in his office only by 11.30 AM. The time given to the first appellant for personal hearing was at 11.00 AM on 10-12-2009. But in the affidavit filed the time given is shown as 11.30 AM which was the time given to the second Appellant. This shows that the Commissioner is not forthcoming in a transparent manner. So we find the narration of events as given by Appellants to be more likely to be true rather the version of the Adjudicating authority that the Appellants did not appear for hearing or request for any adjournment on 10-12-2009. Either there is lack of co-ordination in the office of the Adjudicating authority or there is no arrangement to keep him informed about the engagements for the day or to brief him about visitors who came in response to appointments given or there is total lack of bonafide approach on the part of the adjudicating authority. Whichever be the situation, it is not a satisfactory situation.

5. What is more disturbing is that there is no earnestness in giving natural justice which should not be so. So we set aside the order and remit the case to the adjudicating authority for de-novo consideration.

6. Now the Appellants are directed to appear before the adjudicating authority on 13-06-2011 at 11.30 AM to fix a mutually convenient date for personal hearing and thereafter the adjudicating authority shall give proper opportunity for personal hearing and decide the case afresh. Needless to say that the purpose of sending this case back is to cure the complaint regarding denial of natural justice and quibbling about dates should be avoided. If there is a recalcitrant approach on the part of the Appellants by adopting dilatory tactics the records should speak, keeping in mind the onus cast on any public authority to dispense natural justice. It is hoped that the adjudicating authority will not give room for another round of frivolous proceedings creating avoidable work all around.

7. The Appeals and stay petitions are disposed of accordingly.

(Pronounced in open Court)

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)