

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1009/2006 - EX[DB]

Date 16/11/2011

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

To :
BIRLA CORPORATION LTD.
P.O. BIRLA VIKAD, SATNA
BIRLA CORPORATION LTD.

Appellant

Vs
Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of **Final order No.944/**
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

2011 EX[DB] dated 11-11-11


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

MR.RATHORE & GROVER

LAW OFFICES, E-500, GREATER KAILASH-II NEW DELHI-110048,
PHONE//FAX:41638382

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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

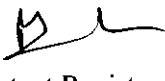
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15

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


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.II**

E/Appeal No.1009/2006

Date of Hearing: 27.10.2011

(Arising out of order in original No. 49/Commr/CEX/BPL/05 dated 20.12.2005 passed by the Commissioner of Customs & Central Excise, Bhopal)

For Approval and signature:

Hon'ble Mr D.N. Panda, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?
 2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?
 3. Whether their lordships wish to see the fair copy of the order?
 4. Whether order is to be circulated to the Department Authorities?
-

M/s Birla Corporation Ltd

Appellants

Vs

CCE, Bhopal

Respondent

Appeared for the Appellant: Shri Sanjay Grover, Advocate
Appeared for the Respondent: Shri I.Beg, DR

Coram: **Hon'ble Mr D.N. Panda, Member Judicial**
Hon'ble Mr. Mathew John, Member Technical

FINAL ORDER No. 944/2011-EX

Per D.N. Panda:

Both the sides agree with the legal position that what is not capital goods will not be held to be so and that what that is not manufacture of excisable goods or manufacture of capital goods that cannot also be held so. According to them, if the authority below follow the law laid down by the Apex Court in the case of Saraswati Sugar Ltd 2011 (2) ELT 465; CCE Vs. Rajasthan Spinning & Weaving Mills 2010 (255) ELT 851 (SC) and Vandana Global 2010 (253) ELT 440, the matter in controversy can be decided granting fair opportunity to both sides since all these judgments were not before the authorities below while passing the impugned order.

2. Considering the agreement of both sides, we remand the matter to the adjudicating authority to test the materials on record with legal pleadings, if any, and applying relevancy, dependability and essentiality test as well as taking the law into consideration ~~and to~~ ~~shall~~ decide the controversy afresh. Both sides are entitled to reasonable opportunity to lead their defence both on facts and law at the denovo adjudication stage. It would be proper if the matter is also disposed of within six months from the date of fixation of final hearing.

3. The learned DR mentions that ^{refund of} money deposited during

pendency of the adjudication shall not be insisted upon by the appellant. Learned Counsel agrees to such proposal.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*