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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/124 /2009 - EX[DB] WITH E/S/137/2009-EX
E/M/176/2009& E/M/487/2010-EX

Date **08/12/2011**

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

To :
M/S JINDAL STEEL AND POWER LTD.
POST BOX NO. 16, KHARSIA ROAD, RAIGARH-
496001. CHATTISGARH.

M/S JINDAL STEEL AND POWER LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

MISC ORDER NO. 716 & 717/2011-EX
STAY ORDER NO. 1393/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.1012/ 2011 EX|DB|** dated 15-11-11 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. L. P. ASTHANA, ADV,
R-163, IIND FLOOR,
GREATER KAILASH-I,
N. DELHI-48
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

Assistant Registrar
(Excise Appeal Branch)

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

Date of Hearing : 1.11.2011

Excise Misc. No. 487 of 2011 and Misc. No. 176 of 2009, Excise Stay No. 137 Of 2009 and Excise Appeal No. 124 of 2009

[Arising out of Order No. Commissioner/RPR/89/2008 dated 17/20.10.2008 passed by the Commissioner of Central Excise & Customs, Raipur]

Coram:
Hon'ble Shri S.S. Kang, Vice 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?	
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 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 Jindal Steel & Power Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

Appearance:

Appeared for Appellant : Shri L.P. Asthana, Advocate
Appeared for Respondent : Shri R.K. Verma, DR

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

MISC order No. 716 & 717/2011-EX
STAY order No 1393/2011-EX
FINAL Order No. 1012/2011-EX..............dated............

Per Mathew John :

In these proceedings Misc. Applications No. E/M/487/2011 and E/M/176/2009 and Stay Petition No. E/S/137/2009 filed in Appeal No. E/124/2009 are being considered.

2. The Appeal relates to demand of 10% of the value of exempted products made under Rule 6 of the Cenvat Credit Rules 2004 on the ground that Cenvat credit has been taken on inputs used in the manufacture of both dutiable products and exempted products.

3. Misc. Application No. 176/2009 was filed for production of additional evidence. Misc. Application No. 487/2011 was filed requesting for withdrawal of the Appeal. The counsel present today for the Appellant submits that he wants to withdraw the Application 487/2011. This is because the Appellant had filed necessary Application as per the provisions of Rule 6 of the Cenvat Credit Rules which was amended with retrospective effect vide Section 73 of Finance Act, 2010 by which they could close the dispute by reversing credit taken on inputs that has gone into the manufacture of exempted products. The Application has already been decided by the concerned Commissioner of Central Excise. The Appellant was of the view that thereafter nothing may survive in the Appeal filed and for that reason they filed an application for withdrawal of Appeal. Now, they feel there is need to set aside the impugned order otherwise duty demanded and penalty imposed under the impugned order may not get set aside.

4. The Authorised Representative for Revenue admits that Commissioner of Central Excise has accepted the declaration filed as per the provisions in Section 73 of the Finance Act 2010 vide order dated 31.1.2011 and the impugned order may not survive.

5. Considering arguments on both sides, we allow the Appellant to withdraw the Misc. Application NO. 487/2011. Application No. 176/2009 has become infrucutous in the circumstances. Further, we do not find it necessary to insist on pre-deposit of dues arising from the impugned order. So the prayer in the stay application No. 137/2009 is allowed and the Appeal is admitted. We also find that the impugned order does not survive in the circumstances. Therefore, Appeal No. 124/2009 is allowed by setting aside the impugned order.

5. In the above manner, two Misc. Applications stay Application and the Appeal itself are disposed of.

(Pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM