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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/1606/2011-1607/2011 - EX[DB] WITH E/S/2091-2092/2011-EX Date **19/12/2011**

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

To :
KAMDHENU ISPAT LTD.
A-1114, RIICO INDUSTRIAL AREA, PHASE-III,
BHIWADI (RAJ.)

KAMDHENU ISPAT LTD. Appellant

Vs

C.C.E. JAIPUR I **STAY ORDER NO. 1556-1557/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1050-1051/ 2011 EX|DB|** dated 12-12-11 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY, NEW DELHI-110024

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. SATISH AGARWAL, DIRECTOR OF KAMDHENU ISPAT LTD., A-1114, RIICO INDUSTRIAL AREA, PHASE-III, BHIWADI (RAJ.)

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:5.12 .2011

Stay Application No.2091-2092 of 2011 and Central Excise Appeal No.1606-1607 of 2011

Arising out of the order in original No.39/2011 (CE)-Commissioner dated 30.3.2011 passed by the Commissioner, Central Excise, Jaipur I.

For Approval and Signature:

Hon'ble Mr. S.S. Kang, Vice Presidentr
Hon'ble Mr. Mathew John, 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?	
2	Whether it should be released under Rule 26 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Kamdhenu Ispat Ltd. .. Applicants/Appellants
Satish Agarwal

Vs.

C.C.E., Jaipur I .... Respondent

Appearance:

Shri K.K. Anand, Advocate for the appellants
Shri S.R. Meena, D.R. for the respondent

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

STAY oral order No. 1556-1557/2011-EX
FINAL Oral Order No. 1050-1051/2011-EX

Per Mr. S.S. Kang:

Heard both sides. The applicants filed these applications for waiver of pre-deposit of duty of Rs.1,50,60,802/-, interest and penalties. The applicants are engaged in the manufacture of mild steel ingots, rolled bars and rods. The case of the Revenue is that the applicants received 78 MTs. of ingots from Kanika Strips Ltd. and Durga Enterprises belonging to one Shri Rakesh Bansal, Director which were not entered in the statutory record and were used in the manufacture of final product cleared without payment of duty. The major portion of the demand is confirmed on the ground that the applicants manufactured and cleared steel bars without payment of duty.

2. The contention of the applicants is that in addition to manufacture of steel bars, the applicants are also trading in the same goods and the steel bars were received from five firms namely, M/s Kanika Strips, Durga Enterprises, Shiva Steels, Sandeep Enterprises and A.S. Industrial Enterprises and the same were further sold in the market. The goods were procured from the market and resold on payment of sales tax. During investigation, when the applicants disclosed the names of the suppliers, the Revenue, during investigation, recorded the statements and in the statements, the suppliers of bars denied supply of ~~ingots~~ goods to the applicants and on this basis , the Revenue confirmed the demand. The contention is also that the proprietor of Kanika Strips and Durga Enterprisese Shri R.K. Bansal in his statement disclosed that 78 MT of ingots were supplied to the applicants, however, he denied the supply of the MS bars to the applicants. The contention is that the applicants asked for cross-examination of the concerned persons who supplied MS bars as well as Shri Rakesh Bansal as the statements were recorded at the back of the applicants and the adjudicating authority denied the cross-examination on the ground that after passage of time witness may depose in favour of applicants.

3. The contention is that the on the basis of the statements relied upon by the adjudicating authority regarding which request for

cross is denied the impugned order is passed in violation of the principles of natural justice.

4. The contention of the Revenue is that the applicants disclosed the names of supplier of MS bars and investigations were conducted and during investigation, the supplier confirmed that only invoices were issued without supply of any goods. Therefore, the plea of the applicants ~~is~~ that they are trading in the same goods is not sustainable. It is also submitted that the supplier of 78 MTs of MS ingots, Shri Rakesh Bansal in his statement specifically disclosed that these quantities were supplied to the applicants which were not reflected in the record of applicants. The contention is that in the circumstances, the demand is rightly made.

5. We find that before the adjudicating authority the applicants specifically took a plea that the applicants are also trading in MS bas and procured the same from the five firms. During investigation, the statements of the concerned person from the supplier were recorded where the supplier denied the supply of MS bars to the applicants. The applicants asked for cross-examination and same were denied. ~~which were denied to them~~. We find that the statements ~~which~~ were recorded at the back of the applicants and the same were relied upon by the adjudicating authority for confirming the demand. In these circumstances, we find merits in the contention of the appellants that the applicant has right to cross-examine those witnesses. In these circumstances, we find that the impugned order is passed in violation of the principles of natural justice hence set aside, after waiving the pre-deposit of duty, interest and penalties, and we remand the matter to the adjudicating authority to decide afresh after affording an opportunity to cross-examine the witnesses whose statements were relied upon by the adjudicating

authority and after affording opportunity of hearing to appellants. The appeals are also allowed by way of remand.

(S.S. Kang)
Vice President

(Mathew John)
Technical Member

scd/