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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/559 /2010 - EX[DB]
E/S/575/10, E/M/716/2010,E/CO/1128/10-EX

Date **24/02/2012**

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

To :
M/S SHRI BAJRANG POWER & ISPAT LTD.

VILLAGE-BORJHARA,
URLA-GUMA ROAD,
DISTT.-RAIPUR (C.G.)

M/S SHRI BAJRANG POWER & ISPAT LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

STAY ORDER NO. 334/2012-EX
MISC ORDER ON.157/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.214/ 2012 EX|DB|** dated 22-2-12 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.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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-3
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3

E/Stay/575/2010 in Appeal No.E/559/2010
with E/Misc/716/10 and E/CO/1128/10

(Arising out of OIO No.COMMISIONER/RPR/81/2009 dt.22.12.11 passed by the CCE(A), Raipur)

Date of Hearing/Decision: 16.02.2012

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the 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.Shri Bajrang Power & Ispat Ltd. Appellant

Vs
CCE, Raipur Respondent

Present for the Appellant: Shri AR Madhav Rao, Advocate
Shri R.k.Hasija, Advocate
Present for the Respondent: Shri N.Pathak, AR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

MISC. ORDER No. 157/2012-EX (BR)
STAY ORDER No 334/2012-EX (BR)
FINAL **ORDER NO.** A/214/2012-EX (BR)

PER: ARCHANA WADHWA

After hearing both sides, we find that duty of Rs.1,56,58,132/- stands confirmed against the applicant/appellant in respect of billets cleared by them during the period May,08 to March, 09 to three parties M/s.Shri Bajrang Alloys Ltd.,M/s.Shri Bajarang Metallics &

Power Ltd. and M/s.J.J.Re-Rollers. The said clearances were effected without payment of duty in terms of provisions of Rule 19 (2) of Central Excise Rules,2002 read with Notification No.43/2001-CE (NT) dt.26.6.01. In terms of said provision of law, an assessee is entitled to clear their products to their buyers who was to ultimately clear~~ed~~ the goods for export. Inasmuch as the appellant's buyer supplied the said goods to SEZ, the Revenue entertained a view that supplies to SEZ cannot be considered as export under Rule 19(2). As such, the proceedings were initiated against the appellant for confirmation of demand on the above ground.

2. It is seen that the clearances were effected by the appellant on the basis of permission letter issued by the ~~Board~~ buyers. Simultaneously the proceedings were initiated against one of the buyer of the appellant for cancellation of letter. The adjudicating authority in those cases, held against the assessee, by observing that the clearances to SEZ cannot be equated to ~~SEZ~~ export. On appeal to the Commissioner (Appeals), he held in favour of the assesseee. The Revenue filed appeal before the Tribunal. It is seen that while dealing with the Revenue's appeal in one of the appellant's buyer's case i.e. M/s.Shri Bajrang Alloys Ltd., The Tribunal, vide its Final Order No.C/A/19/12-Cus dt.13.01.12 held in favour of the assessee in that case. For better appreciation, we reproduce para 5 of the said order:-

"The dispute is in very narrow compass as to whether goods procured duty free from DTA by a DTA unit for manufacture of finished goods when cleared to a unit in SEZ shall amount to export. Without going into any other detail a bare perusal of clarification issued by Board vide Circular No.29/2006-Cus dated 27.12.2006

clarifying that section 2 (m) of SEZ Act, 2005 envisages that supply of goods or providing services, from DTA to a SEZ unit or SEZ developer shall constitute export. This clarification is enough to dismiss the Revenue's appeal. We order accordingly."

3. As is seen from the above, it stands concluded that the supply of goods to SEZ has to be equated with export. As such, we find that the issue stands settled at the appellant's buyers end. If that be so, the benefit available in terms of Rule 19(2) read with Notification is to be upheld.

4. Apart from the above, we find that the same Commissioner in the case of Shri Bajrang Metallics and power Ltd. held that supply of goods by Shri Bajrang Metallics and power Ltd. to their buyers who had further supplied the same to SEZ have to be held as eligible exempted ~~exemption~~ clearances in terms of Rule 19(2) read with Notification NO.43/2001-CE(NT). There is nothing on record to show that the said order of the Commissioner stands challenged by the Revenue. In any case, having observed that the issue stands settled right upto Tribunal level in the case of M/s.Shri Bajrang Alloys Ltd., we are of the view that nothing survives in the present appeal, in favour of the Revenue.

5. In view of above discussion, we set aside the impugned order and appeal is allowed with consequential relief to the appellant.

6. The stay petition as also appeal gets disposed of in the above manners alongwith with the miscellaneous application seeking placing of permission granted to their buyer on record.

7. We further find that cross objection filed by the Revenue is in the form of written submission. We have already taken note of it. The same is disposed of.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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