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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/3025/2010-3027/2010 - EX[DB] WITH
E/S/2789-2791/2010, E/COD/177,176,179/11&E/CO/113,111,115/11 Date **11/01/2012**

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

To :
M/S SHIV SHAKTI STEEL PVT. LTD.,
VILLAGE- CHAKRADHARPUR ON HAMIRPUR ROAD,
RAIGARH (C.G.)

M/S SHIV SHAKTI STEEL PVT. LTD., Appellant

Vs

C.C.E. RAIPUR **STAY ORDER NO. 39-41/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/14-16/ 2012 EX|DB|** dated 09-1-12 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 SH. S. MALHOTRA, ADV,
CHAMBER NO. 103, C.K. DAPHTARY LAWYER'S
CHAMBER, SUPREME COURT OF INDIA,
BHAGWAN DASS ROAD, N. DELHI-1
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
14. ANAND SARAF, DIRECTOR
M/S SHIV SHAKTI STEEL PVT. LTD.,
VILLAGE- CHAKRADHARPUR ON HAMIRPUR ROAD, RAIGARH (C.G.)
15. GOURAV JHUNJHUNWALA, DIRECTOR OF
M/S SHIV SHAKTI STEEL PVT. LTD.,
VILLAGE- CHAKRADHARPUR ON HAMIRPUR ROAD, RAIGARH (C.G.)

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 : **19.12.2011**

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

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 Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

No. E/S/2789/2010 in E/3025/2010, E/COD/177/2011, E/CO/113/2011

(All Appeals Arising out of Order-in-Original No. COMMISSIONER/RPR/45/2010 dated 23.6.2010 passed by the Commissioner of Customs & Central Excise, Raipur)

M/s Shiv Shakti Steel Pvt. Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

No. E/S/2790/2010 in E/3026/2010, E/COD/176/2011, E/CO/111/2011

Anand Saraf, Director — Appellant

Vs.

CCE, Raipur — Respondent

No. E/S/2791/2010 in E/3027/2010, E/COD/179/2011, E/CO/115/2011

Gourav Jhunjhunwala — Appellant

Vs.

CCE, Raipur — Respondent

Appearance

Appeared for Appellant : Shri S. Malhotra, Advocate &
Shri Poojan Malhotra, Advocate

Appeared for Respondent : Shri B.K. Singh, Jt. CDR

Coram:
Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Mathew John, Technical Member
STAY order No. 39-41/2012-EX(BR)
FINAL Order No. A/14-16/2012-EX(BR) dated............

Per **D.N. Panda :**

Ld. Counsel submits that making allegation of suppression of manufacture, there is also an allegation of clandestine removal of the output for the same period. The Appellant although was prevented to appear before the adjudicating authority without filing reply to the Show Cause notice, there is merit in the case to succeed. Ld. Counsel invites attention to the production pattern of the sponge iron and says that the production pattern does not demonstrate any suppression of production. When entire production was recorded and clearances were made, the department should not have made demand on several counts as is apparent from para-8 of the adjudication order. If an opportunity is granted to reconcile the facts and figures on each count of demand there may not be further grievance by the Appellant.

2. The ultimate proposal of appellants is to send the matter back to grant an opportunity of hearing.

3. Ld. Jt. CDR, on the other hand, states that suppression of clandestine removal is to be looked into from the facts on record and circumstances. The material facts suggest that the production suppressed at a particular period might have been cleared clandestinely. Apart from that, clandestine removal on other count is also possible. On various scores, demand has been raised by an analytical order.

4. Heard both sides and perused the record.

5. On the [illegible] contention of the appellant as to violation of natural justice, we are not informed whether cogent reason existed for seeking adjournment on different dates. The manner adjournment has been taken and no participation for adjudication is made, that demonstrate that the appellant has abused process of law. Non-cooperation to Revenue is apparent from the order under appeal.

6. In so far as prima facie case is concerned, we have looked into the allegations made against the appellant as is apparent beginning from para-5 of the adjudication order. There was a search conducted to the premises of the appellant and that resulted in discovery of various incriminating materials. Some of the materials suggested questionable modus operandi of the appellant showing clandestine removal. Statements recorded from various persons exhibit that there was

suppression of production. For no satisfactory output achievement against the input used, ld. Authority brought out his serious observation in para 8.2.4.3 of the order. He has examined production register and process log sheets. He found suppression of production of sponge iron in pra 8.2.5.4. Loose papers also demonstrated to that count. The authority examined the manner how the appellant was clearing the goods and using of parallel invoices to show further clearance of the self same quantity of goods. He has also recorded that the principal appellant has questionable conduct in the past and is a habitual offender. Ld. Adjudicating Authority looked from gate register and found nothing was in favour of the appellant as to its good conduct. On verification of the particulars given by Shri Pathak on the sales invoices, the Authority noticed questionable clearances.

7. Aforesaid observations are few examples of the methodology followed by the appellant. Since the appellant says that it has reconciled the facts and figures and also has filed a reply to the Show Cause Notice, it would be proper to send back the matter protecting interest of Revenue asking a reasonable deposit. This we say following the judgement of Hon'ble Punjab & Haryana High Court in the case of **Shiv Sewa Sasadan Vs. CESTAT, New Delhi** – 2010 (254) ELT 249 (P&H).

8. In view of the above decision, we direct the appellant to make deposit of Rs. 30 lakhs (Rupees Thirty lakhs) within eight weeks from today and file the copy of the challan before ld. Commissioner by 15th March 2012 along with an application for fixation of date of hearing. While filing the challan, the appellant has also to file reply to Show Cause Notice to prove its cooperation to Revenue.

9. If the order passed by us above is carried out, the authority shall grant an opportunity of hearing to the appellant and readjudicate the matter afresh on the basis of evidence that is borne by record or that may be adduced by Appellant. Otherwise the appeal stands dismissed.

10. Since other appeals are emanating from the principal cause in the case of Shiv Shakti Steels P. Ltd. in Appeal No. 3025/10, those appeals shall also stands dismissed if there is non-compliance to the order passed above in the case of principal appellant.

11. Since the appeal and stay applications are disposed in all the three cases, the cross-objection stands dismissed. So also application praying for condonation of delay in filing cross objection being unwarranted is dismissed.

12. We make it clear that noticing Revenue's interest has been prejudiced, aforesaid deposit has been called for as an interim measure and

also considering the past conduct of the appellant as is apparent from the adjudication order. Considering aforesaid aspects and following the judgment of apex Court in the case of **Dunlop India Vs. CCE** reported in 1985 (19) ELT 22 and **Ravi Gupta Vs. Commissioner of Sales Tax, Delhi** reported in 2009 (237) ELT 3 (SC), this order seeks to achieve the object of protection of interest of Revenue.

(Dictated & pronounced in open Court)

(D.N. Panda)
Judicial Member

(Mathew John)
Technical Member

RM