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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

Date **20/01/2012**

Appeal No. E/1255/2010 - EX[DB] WITH
E/S/1289/2010-EX

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

To :
M/S. IND POWER LTD.
VILLAGE-KOTMAR, MOHAPALI, DISTT. RAIGARH
(CG)

M/S. IND POWER LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

STAY ORDER NO. 89/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/31/ 2012 EX[DB]** dated 18-1-12 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
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, GREATER KAILASH-I, NEW DELHI - 110 048.

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1255 of 2010
Excise Stay Application No. 1289 of 2010

[Arising out of Order-in-Original No. COMMR/RPR/19/2010 dated 26.3. 2010 passed by the Commissioner of Customs & Central Excise Raipur (CG)]

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

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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?	:	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

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M/s. Ind Power Ltd. — Appellants

Vs.

Commissioner of Customs & Central Excise, Raipur — Respondent

Appearance:

Shri L.P. Asthana, Advocate for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing /decision: 17.01.2012
STAY ORAL ORDER NO. 89/2012-EX (BR)
FINAL **ORAL ORDER NO**. A/31/2012-EX (BR)

Per Archna Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of duty of Rs.2,06,15,868/- and penalty of identical amount, we proceed to decide the appeal itself with the consent of both the sides.

2. After hearing Shri L.P. Asthana, learned advocate appearing for the appellant and Shri B.K. Singh learned Jt. CDR for the revenue, we find that the said demand stands confirmed against the appellant in terms of provisions of Rule 6(3)(b) of Cenvat Credit Rules, on the finding that the appellant have used common modvatable inputs in the manufacture of dutiable as also exempted final products.

3. Learned advocate appearing for the appellants submits that they had already moved an application before Commissioner for reversal of proportionate Cenvat credit on the inputs so used in terms of the provisions of Section 73 of the Finance Act 2010. He further clarified that the ~~same~~ said application is still pending before Commissioner and therefore, prays that the matter may be remanded to the Commissioner for de novo consideration in the light of the decision taken by him on their application for reversal of credit.

4. Learned Jt. CDR has no objection to the above prayer of the learned advocate.

5. In view of the above, we set aside the impugned order and remand the matter to the Commissioner to be decided after deciding the application made in terms of Section 73 of the Finance Act, 2010.

6. Stay petition as also appeal gets disposed of in the above terms. Cross Objection also stands disposed of.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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