TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date **16/03/2012**

Appeal No. E/2215/2011 - EX[DB]
E/S/2905/2011-EX

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

To :
M/S PRIME ISPAT LTD.
VILLAGE-BANA, VIA-HEERAPUR, TENDUA ROAD,
RAIPUR. (C.G.)
492001

M/S PRIME ISPAT LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

STAY ORDER NO. 420/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/283/ **2012 EX[DB]** dated 23-2--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.A.K.MISHRA, CONSULTANT,
B-261, NORTH EX MALL, SECTOR-9, ROHINI, DELHI-85

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

Date of Hearing : 23.2.2012

Excise Stay No. 2905 of 2011 and Excise Appeal No. 2215 of 2011

[Arising out of Order-in-Original No. COMMISSIONER/RPR/CEX/26/2011 dated 16.6.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

Prime Ispat Ltd. Appellants

Vs.

CCE, Raipur Respondent

Appearance:

Appeared for Appellant : Shri A.K. Mishra, Consultant

Appeared for Respondent : Shri S.R. Meena, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

STAY order No. 420/2012-EX(BR)
FINAL Order No. A/283/2012-EX(BR) dated............

Per **Mathew John :**

The Appellants are manufacturers of Hot Rolled Products of Iron and Steel falling under Chapter 72 of the First Schedule to the Central

Excise Tariff Act, 1985. During the period 2006-07 and 2008-09 they had supplied 1791.690 MTs of the above products to Developers of Special Economic Zones and did not pay any excise duty on such goods for the reason that supplies made to developers were to be treated as exports.

2. Revenue was of the view that the goods so exported were to be treated as exempted goods and the provisions of Rule 6 of Cenvat Credit Rules, 2004 will apply for goods so supplied and consequently the Appellants had to pay 10% of the value of the goods so supplied under provisions of Rule 6(3) of Cenvat Credit Rules, 2004. On the above basis, a Show Cause Notice was issued demanding duty of Rs.72,48,661/- along with interest and penalties. On adjudication, the said demand has been confirmed along with interest and penalties. Aggrieved by the said order of the Commissioner, the Appellants have filed this Appeal.

3. The contention of the Appellants is that it has been clarified by the Ministry vide CBEC Circular No. 29/2006-Cus. dated 27.12.2006 that

clearance to SEZ developers will be considered as export under Central Excise Act and Rules. Once such clearances are considered as export there is no need to recover any amount as per Rule 6(3) of Cenvat Credit Rules in respect of supplies made to SEZ Developers. He also pleads that this issue has already been decided by the Tribunal in a few case like the following :-

(1) **Bhoruka Aluminium Ltd. Vs. Commissioner** – 2009 (247) ELT 636

(2) **Commissioner Vs. Vayhan Air Controls Pvt. Ltd.** – 2010 (261) ELT 468.

(3) **Sujako Interiors Pvt. Ltd. Vs. CCE** – 2011 (268) ELT 505.

4. The A.R. for Revenue fairly agrees that the issue involved in this case is the same as those covered in the decisions of the Tribunal cited above.

5. We find that the issue involved in the present appeal is no more res integra and it is decided in favour of the Appellants. Therefore, we find it proper to waive the requirement of pre-deposit for admission of Appeal and it is so waived and thereafter the Appeal itself is taken up for

hearing. Considering that the issue involved in this matter is already settled following the decisions of the Tribunal cited above, we allow the Appeal itself.

6. Thus the stay petition as well as appeal are disposed of.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM