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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/2379/2011 - EX[DB] WITH E/S/3105/2011-EX   Date **21/03/2012**

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

To :
M/S STEEL AUTHORITY OF INDIA LTD.
(BHILAI STEEL PLANT), ROOM NO. 118, ISPAT
BHAWAN, BSP, BHILAI.
490001

M/S STEEL AUTHORITY OF INDIA LTD.   Appellant
Vs
C.C.E. RAIPUR   **STAY ORDER NO. 429/2012-EX**   Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/289/ 2012 EX|DB|** dated 06-3-12 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 06/03/2012.
DATE OF DECISION : 06/03/2012.

Excise Stay Application No. 3105 of 2011 in Appeal No. 2379 of 2011

[Arising out of the Order-in-Original No. Commissioner/RPR/CEX/ 24-25/2011 dated 07/06/2011 passed by The Commissioner of Customs & Central Excise, Raipur.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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 would 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 Department Authorities?	:	Yes

M/s Steel Authority of India Ltd. — Appellant

Versus

CCE, Raipur — Respondent

Appearance

Shri Amit Jain, Advocate – for the appellant.

Shri S.R. Meena, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY Order No. 429/2012-EX(BR)
FINAL Order No. A/289/2012-EX(BR) Dated : ______________

Per. Archana Wadhwa :-

Demand of Rs. 75,28,050/- stand confirmed against the applicant/appellant for the period October to December, 2008 by demanding 10% of the final exempted product, which stands supplied to SEZ developers, in terms of the provisions of Rule 6 (3) (b) of Cenvat Credit Rules.

2. The short issue involved in the present appeal is as to whether supplies made to SEZ developers has to be considered as deemed export so as to be covered under the provisions of Rule 6 (6) (i) of Cenvat Credit Rules. It is the case of both the sides that the said provisions were amended w.e.f. 31/12/2008 so as to include the supplies made to SEZ developers, in which case the provisions of Rule 6 (3) (b) would not apply. However, as the period is prior to 31/12/2008, the demands stand confirmed against the applicant.

3. We find that the issue is no more res-integra. In the case of **Sujako Interiors Pvt. Ltd. vs. CCE, Ahmedabad** reported in **2011 (268) E.L.T. 505 (Tri. – Ahmd.)**, it was held that clearances to SEZ developers have to be treated as deemed exports, thus not attracting the provisions of Rule 6 (3) (b) and requiring any payment of 10% of value of the said products. To the same effect is the Tribunal decision in the case of **M/s Ashirvad Pipes Pvt. Ltd. vs. CCE, Bangalore** reported in **2012 – TIOL – 187 – CESTAT – BANG**.

4. In fact, we find that the issue as to whether amendment made on 31/12/08 is required to be held as clarificatory and, hence, retrospective was considered by the Tribunal in the case of **Sujana Metal Products Ltd. vs. CCE, Hyderabad** reported in **2011 (273)**

E.L.T. 112 (Tri. – Bang.). In detailed judgment, it was held that supplies to SEZ developers are to be equated with exports. The Board's Circular issued vide F. No. 267/52/2008-CX.8 dated 7/1/2009, relied upon by the learned SDR was also considered by the Tribunal in the said decision of **Sujana Metal Products Ltd. vs. CCE, Hyderabad** (supra). As such, we are of the view that the issue is fully covered in favour of the assessee by the above referred three judgments and nothing more ~~is~~ required to be ~~establish~~ addressed by either side. No contrary judgment has been brought to our notice. As such, we deem it fit to dispose of the appeal itself at this interim stage.

5. Following the ratio of the above decisions, we, after dispensing with the condition of pre-deposit of duty and penalty, set aside the impugned order and allow the appeal with consequential relief to the appellant.

6. Stay petition as also appeal get dispose of in above manner.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK