

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

Excise Appeal No. E/55032/2014-Ex[SM]

[Arising out of Order-In-Appeal No. 156/RPR-I/2014 dated 09.07.2014
passed by Commr. (Appeals) Raipur]

M/s Kalindi Ispar (P) Ltd.

...Appellant(s)

Vs.

C.C.E. Raipur

...Respondent(s)

Appearance:

Mr. Abhas Mishra (Advocate) for the Appellant
Mr. K. Poddar (DR) for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 22.06.2017

Final Order No. 54359/2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 09.07.2014 passed by the Commissioner (Appeals), Customs and Central Excise, Raipur. The appeal filed by the appellant was dismissed on the ground that the appellant did not file the reply to SCN and as such the grounds taken before him cannot be considered in terms of Rule 5 of Central Excise (Appeals) Rules, 2001. On merits, the Ld. Commissioner (Appeals) has held that the appellant has not satisfactorily explained uses of the waste and scrap material in the repair and maintenance of the plant and machinery installed within the factory.

2. Heard both the sides and perused the records.

3. On perusal of ER-1 returns available in the case file, I find that the appellant had categorically reflected generation of waste and scrap during the relevant period and also consumption of such waste and scrap in the normal wear and tear to the plant. Further, the benefit captive consumption as provided under Notification No. 67/1995 has also been mentioned in the said ER-1 Return. Thus, it cannot be said that on the basis of the available records, the matter cannot be adjudicated, even if no reply to SCN was filed by the appellant.

4. Therefore, the matter is remanded back to the original authority for adjudication of the matter afresh on the basis of the available records and the submissions to be made by the appellant. Needless to say, that opportunity shall be granted before passing the fresh adjudication order. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha