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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/2876/2007 Date 30/04/2008

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

To :
M/S HIRA POWER AND STEELS LTD.
UNIT NO-II,URLA INDUSTRIAL COMPLEX, RIAPUR
(CG)-493221
M/S HIRA POWER AND STEELS LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 211/08 **Excise** dated 20-3-08 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. BALBIR SINGH, ADV.,
46, ARADHANA, CHNAKPURI
N. DELHI-66
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL No. 2876 OF 2007-DB

[Arising out of Order-in-Original No. Commissioner/RPR/36/2007 dated 30.7.2007 passed by the Commissioner, Central Excise, Raipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. B.S.V. Murthy, 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?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Hira Power & Steel Ltd. — Appellants

Vs.

CCE, Raipur — Respondent

Appearance:
Shri S.M. Tata, SDR for the Revenue

Coram:
Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. B.S.V. Murthy, Member (Technical)

Date of Hearing:20th March, 2008

FINAL ORDER NO. 211/08-Ex dated ________

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby Credit in respect of inputs as well as capital goods was denied. Credit in respect of inputs used in fabrication of captive power plant was disallowed on the ground that power plant is outside the factory of production. In respect of other items like CTD Bars, Angles was denied on the ground that the goods in question are for civil construction.

3. Contention of the appellants is that power plant is constructed at the land adjacent to the factory and they had also filed amended site plan. Hon'ble Supreme Court in the case of Vikram Cement vs. CCE, Indore, reported in 2006 (197) ELT 145 (SC) has held that capital goods used in captive mines are entitled for the credit. Contention is that power generated from power plant is only used by the appellants in the factory of production. Therefore, in view of the decision of the Hon'ble Supreme Court appellants are entitled for the credit. In respect of credit of duty on items like CTD Bars etc. the contention of appellants is that all the items are used in installation of plant and machinery and appellant had not claimed any credit in respect of items which are used in civil construction. Therefore, the appellants are entitled for credit.

4. Contention of Revenue is that power plant is situated outside the factory, therefore, credit was rightly denied and in respect of other

goods contention is that credit was denied on the ground that the same is construction material. In the impugned order there is no finding regarding portion of the goods gone into civil construction and the portion of goods for fabrication of plant and machinery.

4. We find that credit in respect of captive power plant is only denied on the ground that the same is situated outside the factory. Now the issue, whether credit on capital goods outside the factory can be availed is settled by the Hon'ble Supreme Court in the case of Vikram Cement (supra). Hon'ble Supreme Court held that credit in respect of capital goods used in captive mines is admissible. In the present case power plant is situated at the land adjacent to the factory of production and is for captive use only. The appellants also submitted the revised site plan. Therefore, appellants are entitled for credit in respect of inputs used in fabrication of power plant.

5. In respect of CTD Bars & Angles, etc. credit is denied on the ground that the same are construction material. The appellants' submission is that the goods are used for fabrication of plant and machinery and nothing is used for civil construction. We find that in para 4.5 of the impugned order credit on CTD Bars and Angles is denied on the ground that the same is used for civil construction whereas appellants contention is that the same are used for fabrication of plant and machinery. This aspect requires verification. Therefore, the issue of credit on CTD Bars, angles, etc. is remanded to the

Commissioner after setting aside the impugned order in this regard. Credit on power plant is allowed and the penalty in this regard is set aside. The adjudicating authority will decide the issue of admissibility of credit in respect of CTD Bars and Angles etc. and imposition of penalty in this regard afresh after affording opportunity of hearing to appellants. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(B.S.V. MURTHY)
MEMBER (TECHNICAL)

Dated 24th March, 2008

RK