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

Date 24/03/2008

Appeal No. E/2363/2006-SM[BR]

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

To :
M/S USHA MARTIN CONSTRUCTION STEEL LTD
12/16 NAWAL GANJ, AGRA
282006

M/S USHA MARTIN CONSTRUCTION STEEL LTD — Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No 460 /2008 –SM[BR]**. dated 11.2.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE KANPUR
   117/7, SARVODAYA NAGAR, KANPUR
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. 2363 of 2006-SM(BR)

(Arising out of Order-in-Appeal No. 137-CE/APPL/KNP/06 dated 13.3.06 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

1.	**Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?**	
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?**	
4.	**Whether order is to be circulated to the Departmental authorities.**	

M/s Usha Martin Construction Steel Ltd. Appellant

Vs.

CCE, Kanpur Respondent

Appearance:
Shri Ravi Raghvan, Advocate - For appellant
Shri S. Gautam, SDR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 11.2.2008

Final Order No. 460/08-SM(BR) dated 11/2/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby demand was confirmed and penalty was imposed. The

appellants are engaged in the manufacture of steel tor bars. The appellants are working under the Cenvat Scheme availing credit in respect of the duty paid on inputs used in the manufacture of dutiable goods. A Notification No. 16/2001 dated 26.3.2001 was issued in view of the earthquake in Gujarat. As per the Notification cement and steel is exempted from payment of duty which is for the purpose of reconstruction or repair of private buildings, residential or non-residential in the earthquake effected areas of Gujarat. During the period August 2001 to January 2002, the appellant cleared certain quantity of bars under this notification without payment of duty.

3. Show-cause notice was issued demanding 8% of the price of the exempted goods. In view of Rule 6 of Cenvat Credit Rules as common inputs on which credit has been availed are used in the manufacture of dutiable and exempted goods.

4. The adjudicating authority confirmed the demand and imposed penalty.

5. The Commissioner (Appeals) rejected appeal filed by the appellant.

6. I find that the appellant challenged the order on merits as well as on time-bar. On time bar, the contention of the appellant is that the demand is for the period August 2001 to January 2002 and show-cause notice was issued on 12.7.2004 alleging suppression with intent to evade payment of duty against the appellant. The contention is that the appellants were regularly filing ER-1 returns showing the clearance of quantity of goods on payment of duty and cleared under notification without payment of duty.

7. The contention is that show-cause notice was issued after taking into consideration the ER-1 for the period August 2001 to January 2002 as evident from the list of documents mentioned in the show-cause notice.

8. The contention of the Revenue is that on merits the issue is covered against the appellant by the decision of the Tribunal in the case of **Binani Cement Ltd. Vs. CCE** reported in 2004 (172) ELT 478.

9. In respect of time bar, the contention is that the appellant has nowhere informed the Revenue that they are not maintaining separate records in respect of common inputs on which credit has been taken.

10. I find that on merit and in view of the decision of the Tribunal that the issue is settled against the appellant.

11. On the issue of time bar, I find that the demand is for the period August 2001 to January 2002 and show-cause notice was issued on 12.7.04 alleging suppression with intent to evade payment of duty. The appellants were regularly filed ER-I monthly returns showing clearance of goods on payment of duty and clearance of the same goods under notification without payment of duty. The assessable value of the goods was also

reflected in the monthly returns. The appellants were also filing the copies of the relevant statutory record showing that they were taking credit in respect of the goods used in their final product. In these circumstances, I find that the allegation of suppression on the part of appellant to evade payment of duty is not sustainable hence demand is set aside as time bar. Consequential penalty is also set aside. The appeal is allowed as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM