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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 05/01/2011

Appeal No. E/887 /2008 – SM[BR]

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

To :
M/S DWARKESH SUGAR INDUSTRIES LTD.
DWARKESH NAGAR, BUNDKE,DISTT- BIJNORE

M/S DWARKESH SUGAR INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 11 / 2011 –SM[BR] dated 3.11.2010 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW
DELHI
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 -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.887 of 2008

(Arising out of Order-in-Appeal No.217-CE/MRT-II/2007 dated 20.8.07 passed by the CCE (A), Meerut-II)

Date of Hearing: 03.11.2010
Date of Decision: 03.11.2010

For approval and signature:
Hon'ble Mr.Ashok Jindal, Member (Judicial)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
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.Dwarkesh Sugar Industries Ltd. Appellant
Vs.
CCE, Meerut-II Respondent

Present for the Appellant: Ms.Sukriti Das, Advocate
Present for the Respondent: Shri B.L.Soni, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 11/2011 SM (Br)

PER: ASHOK JINDAL

The appellant was denied for input credit on M.S.Bars, Rods, Channels, etc. which were used in the foundation (structures of the machines).

2. The matter was listed for final hearing today, the request for adjournment was sought.

3. Heard both sides.

4. From the perusal of the records, it was found that the matter was listed on several times earlier also and all the time, the matter was being adjourned for one pretext or the other and hence request for adjournment is denied. The matter is taken up for disposal on merits.

5. As the issue involved in this case is squarely covered by the decision of the Larger Bench of this Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in 2010 (253) ELT 440 (Tri.LB) wherein it was held that the input credit on supporting structures is not available to the assessee. Accordingly, in this case, also the assessee is not entitled for input credit on M.S.Bars, Rods, Channels, etc which were used in the foundation (structures of the machines).

6. Regarding the penalty, as the issue involved is the interpretation of law, the penalty is not leviable in this case on the appellant.

7. With these observations, the demand is confirmed and the penalty is dropped. The appeal is allowed partly.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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