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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

Appeal No. E/1444/2009 – SM[BR] E / CO / 168 / 2009-SM Date **11/01/2011**

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S SUNMARG ISPAT PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 35 / 2011- **SM[BR]** dated 3.1.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S SUNMARG ISPAT PVT. LTD.
RING ROAD NO. 2, GONDWARA,
RAIPUR (C.G.)
2. Adv. / Consult
NONE:----------------
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.E/1444/2009-SM
E/CO/168/2009-SM

Date of Hearing: 03.01.2011
Date of Decision: 03.01.2011

(Arising out of Order-in-Appeal No.35/RPR-I/2009 dated 26.3.2009 passed by the CCE(A), Raipur)

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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 should 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 Departmental authorities?	NO

CCE, Raipur — Appellant

Vs.

M/s.Sunmarg Ispat Ltd. — Respondent

Present for the Appellant: Shri K.P.Singh, SDR
Present for the Respondent: None

Coram: Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORDER NO.** 35/2011 SM(Br)

PER: M.VEERAIYAN

The appeal No.E/1444/09-SM is by the department against the order of the Commissioner (Appeals) No. No.35/RPR-I/2009 dated 26.3.2009. The cross objection No.E/CO/168/09-SM is related to this appeal and basically in support of the order of the

Commissioner (Appeals) which is totally in favour of the respondents.

2. Heard the learned SDR. None appears for the respondents, in spite of the notice.

3. The relevant facts, in brief, are that the respondents are manufacturer of iron and steel products. They have taken credit of duty paid on M.S.Angles, Channels, Joists, Plates and Beam. As per the show cause notice, the said structural items were generally used either for erection or construction of permanent supportive structures or for repairs of plant and machinery. No specific use of each of the items has been mentioned in the show cause notice. The original authority has held that the said items could not be considered as capital goods or as components, spares, and accessories of the capital goods and accordingly disallowed and ordered recovery of cenvat credit of Rs.3,75,378/- alongwith interest and imposed equal amount as penalty. The Commissioner (Appeals) has set aside the order of the original authority subject to verification of the chartered engineer's certificate which has been produced before him.

4. Learned SDR submits that the materials on which cenvat credit has been taken are not eligible for cenvat credit as most of the items have been used in erection of permanent structures. He fairy concedes that specific use of the items were not discussed either in the show causes notice or in the impugned order. He also submits that the Commissioner (Appeals) has disposed of the appeal subject to verification of the contents of the chartered engineer's certificate which has

been produced before him. Under these circumstances, the learned SDR seeks the remand of the matter for considering the issue afresh in the light of the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in 2010 (253) ELT 440 (Tri.-LB).

5. I have considered the submissions of the learned SDR and perused the records. The show cause notice alleged that the impugned items were generally used either for erection or construction of permanent supportive structures or for repairs of plant and machinery. The Commissioner (Appeals) has allowed the appeal taking into account the chartered engineer's certificate. However, he has not given final decision as the benefit extended by the order was subject to verification of the contents of the chartered engineer's certificate. The claim of the learned SDR is that at least in respect of the some of the impugned items, the issue has been settled in their favour by the decision of the larger bench of the Tribunal in the case of

Vandana Global Ltd. cited supra. Since the decision of the Tribunal in the case of Vandana Global Ltd. has been rendered after passing the order of the Commissioner(Appeals), since the specific use of the items have not been looked into in the earlier stages of the proceedings and since the Commissioner (Appeals) has also entrusted the verification of the certain aspects by the original authority, I deem it proper to set aside the order of the Commissioner (Appeals) and the order of the original authority and remand the matter to the original authority for fresh consideration after granting a reasonable opportunity of hearing to the party.

6. The appeal of the department is allowed by way of remand as above. Cross objection is also disposed of.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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