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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/1026/2009 – SM[BR] E/ CO/ 183 / 2009-SM[BR] Date **13/01/2011**

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

To :
C.C.E ALLAHABAD

38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S JHUNJHUWALA VANASPATI LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 49 / 2011- **SM[BR]** 6.1.2011

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 JHUNJHUWALA VANASPATI LTD.,
VILL. NAUPUR,
P.O.THANAGADDI,DISTT.-
JAUNPUR, (U.P.)
2. Adv. / Consult SHRI S.P. OJHA CONSULANT
299 BAGHAMBARI HOUSE SCHEME
ALLAHPUR, ALLAHABAD

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.1026 of 2009-SM

Excise Cross Objection No.183 of 2009-SM

Date of Hearing: 06.01.2011
Date of Decision: 06.01.2011

(Arising out of Order-in-Appeal No.09-CE/ALLD/2009 dated 22.01.2009 passed by the CCE (A), Allahabad)

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?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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?	Yes

CCE, Allahabad — Appellant

Vs.

M/s.Jhunjhuwala Vanaspati Ltd. — Respondent

Present for the Appellant: Shri Anil Khanna, SDR
Present for the Respondent: Shri S.P.Ojha, Consultant

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

Final **ORDER NO.** 49/2011 SM (Br)

PER: M.VEERAIYAN

The appeal No.E/1026/09 has been filed by the department against the order of the Commissioner (Appeals) No.09-CE/ALLD/2009 dated 22.01.2009. The cross objection

No.E/CO/183/09 is connected to this appeal basically in support of the order of the Commissioner (Appeals).

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents procured items like stainless steel guild, brass sheet, HTSS plates, aluminium coils, HT rolled plates, M.S.Channels & Angles, Door materials and brass rods and taken credit as capital goods. A show cause notice was issued alleging that the said goods could not be considered as capital goods and proposing to demand of duty of Rs.1,59,942/- by disallowing the credit and proposing penalty. The original authority confirmed the demand of duty alongwith interest and imposed penalty. The Commissioner (Appeals) set aside the order of the original authority.

4. Learned SDR reiterating the grounds of appeal submits that the impugned items cannot be considered as capital goods and credit will not be admissible 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 2010b (253) ELT 440 (Tri.-LB). To a specific query as to whether the use of each of these items have been looked into by the original authority, the learned SDR submits that the focus of the dispute before the original authority was different and therefore was not possible to pin point the specific items from the records. For example, it cannot be concluded as to whether the brass sheets were used as inputs for fabricating the capital goods or were components fitted with capital goods, in the absence of evidence in this

regard submitted by the assessee. He also fairly concedes that the eligibility of credit on items used for storage tank may have to be to be considered by the original authority in the light of the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. cited supra.

5. Learned Consultant for the respondents submits that the items cannot be straightaway called as capital goods. Referring to the definition of the inputs, he submits that the same includes the goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Referring to the definition of capital goods, he submits that the components, spares, and accessories of the goods mentioned in Rule 2 (a) (A) (i) (ii) of Cenvat Credit Rules, 2004 are included as capital goods. Learned Consultant also submits that the part of the claim is time barred.

6. I have carefully considered the submissions made from both sides and perused the records. The submissions of both sides are relevant. It would be proper to send this matter back to the original authority for considering the issues afresh.

7. In view of the above, the order of the Commissioner (Appeals) and the order of the original authority are set aside and the matter is remanded to the original authority for fresh consideration after granting a reasonable opportunity of hearing to the assessee.

eligibility to

8. The original authority shall determine the credit on the different items after taking into account the specific use and claim of the respondents.

9. However, in the facts and circumstances of the case, there is no justification for imposition of penalty and the same is set aside.

10. The appeal is allowed by way of remand on the above terms. The cross objection is also disposed of.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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