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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/1906/2009 – SM[BR] Date **21/01/2011**

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

To :
M/S JAMNA AUTO INDUSTRIES LTD.
JAI SPRING ROAD, YAMUNA NAGAR, (HARYANA)

M/S JAMNA AUTO INDUSTRIES LTD. Appellant

Vs

C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 59 / 2011 –SM[BR] dated 13.1.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8,
PANCHKULA (HARYANA) 134119.
2. Adv. / Consult
MR.JOY KUMAR
FLAT NO 261/1,SEC 45-
A,CHANDIGARH.
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 1906 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 99/ANS/PCK/2009 dated 06/04/2009 passed by The Commissioner (Appeals), Central Excise, Delhi – III, Gurgaon.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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?	:
2.	Whether it would 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 Department Authorities?	:

M/s Jamna Auto Industries Ltd. Appellant

Versus

CCE, Panchkula Respondent

Appearance

None – for the appellant.

Shri R.K. Gupta, Authorized Representative (SDR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 13/01/2011.

Final Order No. 59/2011 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

The point of dispute in this case is as to whether the appellant are eligible for capital goods Cenvat credit in respect of the items falling under sub-heading 7310 1020 of the Tariff used for erecting the cycle stand, store bin, raw racks, rack jali, tools break, brass bags, roof structure, gate wall and trolleys. The department was of the view that since all these items falling under chapter 73 of this tariff are not covered by the definition of capital goods and since the same had been used for erecting structures like cycle stand, store bin, raw racks, gate wall etc., the same are not eligible for capital goods Cenvat credit. It is on this ground that the Assistant Commissioner vide order-in-original dated 27/11/08 denied the Cenvat credit in respect of these items and accordingly confirmed the Cenvat credit demand of Rs. 2,38,717/- alongwith interest beside this also imposed penalty under Rule 15 of the CENVAT Credit Rules, 2004, readwith

Section 11AC of the Act. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order dated 6/4/09 upheld the Assistant Commissioner's order. It is against this order, that the present appeal has been filed.

2. None appeared for the appellant when this case was called for hearing. I find that though the notice had been sent to them in time and the same has been acknowledged by the appellant, there is no communication from them, as to why they are not able to appear for hearing today. In view of this, in accordance with Rule 21 of the CESTAT Procedure Rules, 1983, this appeal is being decided ex-parte after hearing the Departmental Representative.

3. Heard Shri R.K. Gupta, the learned Departmental Representative who pleaded that the issue involved in this case is no longer res-integra, as the Tribunal in the case of **Vandana Global vs. CCE, Raipur** reported in **2010 (253) E.L.T. 440** has decided this issue in favour of the Revenue. He also pleaded that all the items falling under Chapter 73 had been used for erecting various structures and none of them are covered by the definition of capital goods.

4. I have carefully considered the submissions of the learned Departmental Representative and have gone through the grounds of appeal in the memorandum of appeal filed by the appellant.

5. The chapter 73 items used for making cycle stand and other structures are not eligible for capital goods in terms of Larger Bench judgment in the case of **Vandana Global vs. CCE, Raipur** (supra). Similarly items used for making almirahs, racks etc. also cannot be said to be the inputs used for making capital goods as the almirahs, racks etc. are not covered by the definition of capital goods. In view of this, I do not find any merit in this appeal. There is no infirmity in the impugned order. The appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK