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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/591 /2008 – SM[BR]** Date **13/04/2011**

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

To :
M/S TOPWORTH STEELS PVT. LTD.
BORAI INDUSTRIAL GROWTH CENTRE,DURG (C.G.)
M/S TOPWORTH STEELS PVT. LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 183 / 2011 –SM[BR]** dated 23.3.2011 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult MS.NEHA GULATI ADV.
R-163, SECOND FLOOR G.K. PART-I. NEW DELHI-48.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
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 -
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
NEW DELHI
Court No.IV

E/Appeal No.591/08-SM

(Arising out of order in appeal No. 154/RPR.II/2007 dated 23.10.2007 passed by the Commissioner of Central Excise (Appeals), Raipur)

Date of Hearing: 23.3.2011

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

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 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?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Topworth Steels (P) Ltd — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Ms. Neha Gulati, Advocate
Appeared for the Respondent: Shri R.K. Gupta, SDR

Coram: **Hon'ble Mr. Mathew John, Member (Technical)**

Final ORDER 183/2011 SM (BR)

Per Mathew John:

The Appellants are manufacturers of Sponge Iron and they are availing Cenvat credit of duty paid on inputs and capital goods. During the period Jan 2005 to Mar 2005 they took Cenvat credit of duty paid on M.S. Angles, Channels, Bars, Plates, Rounds etc used in building capital assets like Stock House, Ground Hopper, Crusher House, Product House, ABC Kiln Cooler, Cooler Discharge etc.

2. The department issued a notice alleging that such goods cannot be considered as "inputs" or "capital goods" and credit taken on account of such goods should be reversed. The adjudicating authority confirmed this demand for an amount of Rs.4,12,642/-. The Appellants filed an Appeal against this order and the Commissioner(Appeal) vide his order dated 17-07-2006, set aside the adjudication order based on a verification report submitted by Inspector of Central Excise as well as the Superintendent of Central Excise. This order became final. However this order has some relevance to the present matter before the Tribunal.

3. In the meanwhile the Appellants had availed Cenvat Credit of Rs. 4,49,208/- during Nov 2005 on account of Cement used in construction of capital assets. Since the department pointed out that they were not eligible for this credit, such credit was reversed on 06-02-2006. On 19-01-2007 the Appellant filed a refund claim for Rs. 4,49,208/- for the credit amount reversed on 06-02-2006 on the ground that eligibility of such credit was also decided by the order dated 17-07-2006 of the Commissioner (Appeal). This refund claim was allowed by the Deputy Commissioner of Central Excise. The department went in Appeal against this order. The Commissioner (Appeal) disallowed the refund claim by his order dated 23-10-2007 on the ground that his order dated 17-07-2006 was not in respect of the credit relating to cement. Incidentally, the Commissioner (Appeal) who passed the order dated 17-07-2006 and the order dated 23-10-2007 is the same person.

Aggrieved by the order dated 23-10-2007, of the Commissioner (Appeal), the Appellants have filed this Appeal before the Tribunal.

4. The Counsel for the Appellants submit that they have not claimed Cenvat Credit on 1013.100 MT of Cement consumed in the construction of building structures. According to her they received a total quantity of 2104.100 Mt of cement during the impugned period. They consumed 1101.000 MTs of Cement in constructing capital goods used in the manufacture of final products and Cenvat credit is claimed only on this quantity of Cement. She submits that the principle involved was decided in the order of the Commissioner(Appeal) in his order dated 17-07-2006, though she fairly concedes that at the time of passing the order only credit of steel items was before the Commissioner (Appeal) and credit on cement was not disputed in that proceeding. She submits that the capital assets in question could not have been manufactured using the iron and steel items alone but cement was equally needed and there is no reason to allow credit for steel items and disallow credit on cement used.

5. She also pointed out a few case laws where eligibility to credit on similar inputs was considered and orders favorable to assesse were passed.

6. The Ld DR on the other hand points out that the entire controversy as to whether credit can be allowed on materials used for constructing immovable property was considered by the Larger Bench of Tribunal in the case of Vandana Global Ltd Vs. CCE2010 (253) E.L.T. 440 (Tri. - LB), finally settling the matter in favor of the department. He points out that as per the decision in Vandana Global, The Appellants are not eligible even for the credit of Rs.Rs.4,12,642/- allowed by decision of Commissioner (Appeal) allowed by order dated 17-07-2006. However he concedes that it is not a matter of dispute in

the present case. But he contests that the eligibility for the credit that is in dispute should be decided in the light of decision of the Tribunal in Vandana Global, supra, and if it is so decided the there is no merit in the present appeal.

7. Considered arguments on both sides.

8. There is no dispute that the credit amount now being claimed by the Appellants was not covered by the proceedings which became final by order dated 17-07-2006 of the Commissioner (Appeal). There is no dispute that eligibility of such credit is a matter decided by the Tribunal in Vandana Global Ltd supra and the decision is that such credit is not available. In view of these facts the Appeal fails and it is dismissed accordingly.

(Pronounced in the open court on 23-03-11)

Mathew John
(Member-Technical)