TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2980/2007 – SM [BR]** Date **25/04/2011**

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 SUPER IRON & STEEL (P) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 206 / 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
M/S SUPER IRON & STEEL (P) LTD
RING ROAD NO 2, POST SARORA,
DISTT- RAIPUR(CG)

2. Adv. / Consult SHRI BIPIN GARG ADV.
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
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.2980/2007

(Arising out of order in appeal No.172/RPR/APPL.I/2007 dated 24.8.2007 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 -

CCE, Raipur — Appellants

Vs

M/s Super Iron & Steel (P) Ltd — Respondent

Appeared for the Appellant: Shri S.K. Bhaskar, SDR
Appeared for the Respondent: Shri Mayank Garg, Advocate

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

Final ORDER - 206/2011 SM (BR)

Per Mathew John:

This case relates to Cenvat credit taken by the Appellant during the period Sep 2003 to Sep 2004 on M.S. Angles, M.S. Channels, M.S. Beams and Joist falling under sub-heading 7216.90 and M.S. Plates falling under Sub-heading 7208.11 used for constructing supporting structures/structural/platform/shed/staircase etc. in the factory of the Appellant on the ground that such goods cannot be considered as "input" for manufacture of final products of the factory or as "capital goods" as defined in Cenvat Credit Rules 2002. This adjudication proceeding resulted in confirmation of duty amounting to.Rs. 217041/-. Penalty equal to this amount was also imposed under rule 13 of Cenvat Credit Rules, 2002/ Rule 15 of the Cenvat Credit Rules 2004 read with section 11AC of the Central Excise Act, 1944.

2. Aggrieved by the adjudication order the Respondent filed an Appeal with the Commissioner (Appeal). The Commissioner (Appeal) set aside the order on the ground that credit can be taken on the impugned items used in fabrication of supporting structures specifically designed to be used as part of the plant. He also held that the demand is time barred since the Appellants had disclosed the usage of the items in Form-IV register maintained by them.

3. Aggrieved by this Order-in-Appeal the department has filed this Appeal before the Tribunal.

4. The grounds taken by the Department in Appeal is that eligibility of credit on material used in supporting structures is no longer res integra as the matter has been decided in favor of the department in the case of Vandana Global Ltd. VS. CCE Raipur – 2010 (253) ELT 440.

5. The department is also contesting the finding of the Commissioner (Appeal) that the demand is time barred. It is argued that

maintenance of the required information in Form-IV in the factory premises doe s not amount to disclosure of the required information to the department. By merely stating that the record was accessible to the department the Appellant cannot escape the charge of suppression of information.

6. Heard arguments on both sides.

7. It is seen that the merit of this issue is settled by the decision of the Larger Bench in Vandana Global Ltd. VS. CCE Raipur – 2010 (253) ELT 440. The only issue to be decided is whether there was any suppression to invoke the extended period for issuing demand under section 11A of the Central Excise Act,1944. As per extant Central Excise Rules, Form-IV is not a register prescribed by the rules and this is not an information submitted to the department. So the information does not get disclosed to the department unless the department scrutinizes the said register. When they claim Cenvat credit on any goods there is an implied declaration that the use is as per the Cenvat Credit Rules. So it is considered that the extended period can be invoked in the facts of this case. So the Appeal succeeds and Order-in-Original merits restoration.

8. However in the matter of penalty, it is noticed that the option to pay duty amount, interest and 25% of the penalty within 30 days of communication of the order was not given in the Order-in-original dated 24-05-2007. As per the decision of the Delhi High Court in K. P. Pouches (P) Ltd Vs. UOI - 2008 (228) E.L.T. 31 (Del.), the adjudicating authority should have given such explicit option. In view of the said decision an option is now given to the Appellant to pay duty amount, interest and 25% of the confirmed duty amount as penalty for final settlement of the matter if such payment is made within 30 days of receipt of this order. If payments are not made so the Order-in-Original will get restored fully.

9. Thus Appeal is allowed by restoring the order-in-original with modification as above.

Pronounced in the open court on 23-03-2011.

(Mathew John)
Member(Technical)