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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/562 /2009 – SM[BR]** Date **04/05/2011**

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

To :
M/S SHREE RAJASTHAN SYNTEX LTD.
REGD. & HO: SRSL HOUSE, POST BOX NO. 209, N.H.8,
PULLA BHUWANA ROAD, UDAIPUR-313004 (RAJ.)

M/S SHREE RAJASTHAN SYNTEX LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 258 / 2011-SM[BR]** dated 28.4.2011 assed 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.BIPIN GARG
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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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/562/09-SM

(Arising out of Order-in-Appeal No.246(DK)CE/JPR-II/2008 dated 16.12.2008 passed by the CCE (Appeals), Jaipur)

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

M/s.Shree Rajasthan Syntex Ltd. — Appellants

Vs.

CCE, Jaipur — Respondent

Present for the Appellant: Ms.Sukriti Das, Advocate
Present for the Respondent: Shri S.k.Bhaskar, SDR

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

Date of Hearing/decision: 28.04.2011

Final **ORDER NO.** 258/2011 SM(BR)

PER: M.VEERAIYAN

This appeal is by the department against the order of the Commissioner (Appeals) by which denial of credit amounting to Rs.1,61,915/- on cement and steel used for fabrication of storage tank was upheld.

2. Heard both sides.

3. Learned Advocate, referring to show cause, submits that the credit used on cement and M.S.Bars used for masonry construction of storage tank has been denied. Referring to the

definition of capital goods in Rule 2(a) of Cenvat Credit Rules, 2002, she submits that storage tank is specifically included as capital goods. Referring to the definition of inputs, she submits that the inputs used for fabrication of capital goods which are in turn used in the manufacture of excisable goods are treated as inputs. Relying on 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, she submits the inputs used for the manufacture of storage tank has been held to be eligible for cenvat credit taking note of the special treatment provided for storage tank in the definition of capital goods. She particularly relies on the para 39 of the said judgement.

4. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals). He submits that cement and M.S.Bars have been used for masonry work of storage tank. This might be used in the fabrication of storage tank and which might be part of the permanent structure and therefore these inputs are not eligible for benefit of cenvat credit and he also relies on the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur cited supra.

5. I have carefully considered the submissions and perused the records. The show cause notice clearly refers to the use of the cement and M.S.Bars in the construction work of storage tanks. However, the use of the storage tank in humidification plant or otherwise is not relevant. It is not disputed that the definition of capital goods under Cenvat Credit Rules, 2002 gives special treatment to storage tank and is included in the term 'capital goods' and the term 'inputs' also includes the goods used in the manufacture

of capital goods which are further used in the factory of the manufacturer. It is not disputed that the appellants were using storage tanks in their factory in relation to manufacture of final products, namely, synthetic yarn.

6. Para 39 of the judgment of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reads as under:-

"There are other details to the Cenvat scheme and we note that the definition of 'capital goods' primarily includes machinery items; components, spares and accessories of the same; and a few other things which have been specifically added such as pollution control equipment; moulds, dies etc.; refractories; tubes and pipes and fittings thereof; and storage tank. The moulds, dies, refractories, tubes and tank have been specifically added as they would not get classified and included as machinery items but the rule makers in their wisdom have specifically and additionally included these perhaps considering their functional utility to the manufacturing process. By specifically including these items, credit in respect of duty paid on such items has been allowed which would not otherwise get coverage under the term 'capital goods'. Secondly, credit of duty paid on inputs used in the manufacture of such specifically listed items has also been allowed. We, however, note that factory shed, building, foundation and structures (in the manufacture of which the impugned goods namely cement and steel items are used) have not been specifically listed under the definition of 'capital goods'."

7. In view of the above, as cement and M.S.Bars are used in the manufacture of storage tank, I hold that the appellant was eligible for cenvat credit. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief as per law.

Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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