

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/86 /2009 – SM[BR]

Date 19/09/2011

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

To :
M/S BINDLAS DUPLEX LTD.
47, SOUTH BHOPA ROAD, MUZAFFARNAGAR.
M/S BINDLAS DUPLEX LTD.

Appellant
Vs
Respondent

C.C.E. MEERUT I

dated 30.8.2011

I am directed to transmit herewith a certified copy of **Final order No. 610 /2011-SM[BR]**
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. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.P.R.MULLICK
27-RACE COURSE, DEHRADUN.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate. New
6. M/s Centax Publications 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 (Haryana)
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. 2, R.K. Puram, NEW DELHI**

COURT No. II

Excise Appeal No.86 of 2009 (SM)

[Arising out of Order-In-Appeal No.181/CE/MRT-I/2008, dated 13.10.08 issued by CCE, Meerut-I.]

Date of Hearing / Decision : 30.08.2011.

For approval and signature:

Hon'ble Mr. D.N.Panda, Judicial 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 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

Bindlas Duplex Ltd.

Appellant

Versus

CCE, Meerut-I

Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Present for the Appellant – Shri P.R.Mullick, Advocate

Present for Respondent – Ms. R.Jagdev, SDR

final Order No. 610 / 2011 SM (B) Dated : _____

Per D.N. Panda:

Shri P.R.Mullick, Id. Counsel submits that at the initial stage of Cenvat Credit Scheme, there were series of confusion among users of inputs as to their classification as capital goods for claiming Cenvat Credit. The goods which are explained in reply to Show Cause Notice (SCN) dt. 17.5.04 were used for either

manufacture of capital goods or component and accessories of capital goods. The captively consumed inputs were components in many occasions. Therefore, the appellant cannot be denied the benefit of Cenvat Credit. Similarly, Electrodes used for jointing the structures of components of capital goods shall be eligible for Cenvat Credit. Therefore, the authorities below erred in holding against the appellant for which the duty and penalty levied shall not sustain.

2. Ld. SDR on the other hand says that the issue of Cenvat Credit admissibility in respect of disputed items no more remained in dispute in view of the judgement of Apex Court in the case of *Saraswati Sugar Mills vs. CCE, Delhi-III* reported in 2001(270)ELT465(SC). According to Ld. SDR when the goods of the appellant failed to meet integral test, those were not entitled to Cenvat Credit. Not only use of the input for manufacture of capital goods is to be established with full proof but also it should be established that the input belongs to the classification of capital goods itself. When the goods failed to be capital goods forming an integral part of the capital goods itself or failed to be either component or parts thereof, no credit is admissible. When the goods are used for structures, grant of Cenvat benefit is out of question. ~~He~~ ^{She} relies on the decision of the Apex Court aforesaid for ~~his~~ ^{her} submission.

2. Heard both sides and perused the records.

3. There is dispute in respect of several items which were summarized in the Show Cause Notice. Soon after the judgement of Apex Court in *Saraswati Sugar Mills (supra)*, it would be proper to send back the matter to the adjudicating authority to examine threadbare each and every items appearing in the annexure of Show Cause Notice about relevancy of inputs for use in manufacture of capital goods, inevitability and indispensability thereof, integral characteristics of inputs as well as classification aspects of the same. Unless these aspects are tested on the basis of evidence on record, the appellant may be deprived of justice.

Law being well settled by Apex Court in the Saraswati Sugar Mills Ltd. (supra) and issue being of technical nature, it would be proper to conduct a field/technical study for decision.

4. When the proposal is to send back the matter as stated above, there is no expression of opinion on penalty aspect. The adjudicating authority shall decide such aspect on the merits of the case.

5. The appellant has grievance that Tribunal has allowed, Cenvat Credit in its case in the past. While looking to this aspect, the authority has also ^{to} looked ~~at~~ various judgements of Hon'ble High Courts and Apex Court aforesaid for disposal of appeals.

7. Granting fair opportunity of hearing, the matter should be concluded at the earliest and preferably by end of December, ^{since} 2011 ^{the} issues are recurring in nature. In the result, the appeal is disposed of by way of remand.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I