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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/1575/2009 – SM[BR]** **Date 16/11/2011**

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

To :
GOBIND SUGAR MILLS LTD.
P.O. AIRA ESTATE, LAKHIPUR KHERI (U.P.)

GOBIND SUGAR MILLS LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 775 / 2011-SM[BR]** dated 1.11.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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 (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.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH
Court No.3

Excise Appeal No.1575 of 2009-SM
(Arising out of Order-in-Appeal No.80/CE/LKO/2008 dt.16.4.09 passed by the CCE(A), Lucknow)

Date of Hearing/Decision: 01.11.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

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?	Yes

M/s.Gobind Sugar Mills Ltd. — Appellant

Vs.

CCE, Lucknow — Respondent

Present for the Appellant: Shri Rajesh Chhibber, Advocate
Present for the Respondent: Shri B.L.Soni, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

Final **ORDER NO.** 775/2011 SM (Br)

PER: ARCHANA WADHWA

As per facts on records, the appellants availed cenvat credit on M.S.joist, channel, angle, beam, bar etc. as supporting in the capital goods.

2. Learned Advocate appearing for the appellant submits that during the period 2005-06, they had taken 50% of credit as first instalment and second instalment of 50% was taken in April, 2007. However, they reversed first instalment, ~~when~~ on the objection being

raised by the jurisdictional Central Excise authorities. However, second instalment taken by them could not be reversed. Hence the present proceedings were initiated for recovery of wrongly availed cenvat credit. He fairly agrees that they should have reversed the second instalment immediately but the same was mistake on their part as also on the ground that the issue is not free from doubt. Larger Bench in the case of Vandana Global Ltd. was passed in the year 2010 laying down that modvat credit is not available in respect of supporting structural. Inasmuch as the period in the present case, is prior to declaration of law by the larger bench, when other decisions in favour of the assessee, the appellant cannot be held guilty for contravention so as to invoke penalty provisions against them.

3. In view of the above submissions of the learned Advocate, there is no challenge to duty, which is accordingly being confirmed alongwith interest. Inasmuch as during the period in question, earlier decisions of the Tribunal were in favour of the assessee and law was declared against them by the larger bench decision in the case of Vandana Global Ltd., I do not find justifiable reason to impose penalty upon the appellant. The same is accordingly set aside. The appeal is disposed of in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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