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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/3691/2006 – SM[BR] **Date 13/12/2011**

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 AGRAWAL STRUCTURES MILLS(P) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 861 / 2011-SM[BR]** dated 9.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S AGRAWAL STRUCTURES MILLS(P) LTD
URLA INDUSTRIAL AREA, P.O.
BIRGAON, RAIPUR(CG)

2. Adv. / Consult
NONE:-----------------

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
NEW DELHI

Date of Hearing:09.11.11
Date of Decision:09.11.11

Excise Appeal No.3691 of 2006-SM (BR)

[(Arising out of common Order-in-Appeal No.146/RPR-I/2006 dated 27.07.2006 passed by the Commissioner of Central Excise (Appeals-I), Raipur (CG)]

For Approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of the cESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

CCE, Raipur — Appellants

Vs

M/s. Agrawal Structures Mills (P) Ltd. — Respondent

Appeared for the Appellant: Rep. by Shri S.K. Bhaskar, DR.
Appeared for the Respondent: Rep. by none.

Coram: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final ORDER 861/2011 SM (BR) Dated:9.1 . 2011

Per Rakesh Kumar:

The respondents are manufacturers of the goods falling under Chapter 72 and 73 of the Central Excise Tariff. They availed central excise duty paid on inputs and capital goods. The department issued a show cause notice dated 9.5.2005 for disallowing the cenvat credit amounting to Rs.53,974/- on M.S. Beams, M.S.Joist, and Channels used for construction/repair of the civil structures, sheds and water tanks used for storing water for non-manufacturing purposes. The cenvat credit demand as raised in the show cause notice was upheld by the Asstt. Commissioner along with interest and besides this, penalty was also imposed on the respondent. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide Order-in-Appeal dated 27.07.2006 set aside the order-in-original and allowed the appeal. Against this order of the Commissioner (Appeals), this appeal has been filed by the Revenue.

2. Though a notice for hearing of this matter had been sent to the respondent well in advance and the same has been acknowledged by them, but when this matter was called, none representing the respondent appeared. Therefore, sofar as the respondent are concerned, this matter is decided ex parte.

3. Heard Shri S.K. Bhaskar, DR for the Department, who pleaded that sofar as the question of eligibility for cenvat credit of M.S. Beams, M.S.Joist and Channels used for fabrication/repair of the civil structures/ shed is concerned, the issue stands decided against the respondent by the Larger Bench of the Tribunal in the case of **Vandana Global Ltd. reported in 2010 (253) ELT 440 (Tribunal-LB)** and that sofar as the storage tanks are concerned, the same are used for non-manufacturing purposes and hence, are not eligible for cenvat credit.

4. I have carefully considered the submissions of the ld. SDR and perused the records. Sofar as the eligibility of cenvat credit in respect of the M.S. Beams, M.S. Joists, and Channels, used as supporting structure/or for sheds is concerned, since these items had been used for making structures fixed to the earth, in view of the judgement of the Tribunal in the case of **Vandana Global Ltd. (supra)** the same would not be eligible for cenvat credit as the supporting structures cannot be treated as capital goods.

5. As regards water tanks, the definition of capital goods specifically covers the tanks. However, it is the department's case that these tanks are used for storage of water for non-manufacturing purposes. From the definition of capital goods in Rule 2(a) of Cenvat Credit Rules, 2004, it is clear that the items covered by the definition are required to be used in the factory ~~for~~ and the purpose of their use is not relevant. Therefore, ~~sofar as~~ so long as the

tanks are used within the factory, the same would be covered by the definition of capital goods irrespective of their uses. Therefore, the Commissioner (Appeals)'s order permitting the cenvat credit in respect of the storage tanks is correct and is accordingly upheld.

6. In view of the above discussion, while the Commissioner (Appeals)'s order upholding allowing of cenvat credit in respect of the storage tanks is upheld, the portion of the order allowing cenvat credit in respect of M.S. Beams, M.S. Joists, Channels used for supporting structures is set aside and in this regard, order-in-original passed by the original adjudicating authority is restored. Since on the issue of eligibility of Cenvat credit of structures of steel items used for supporting structures, there was conflicting decisions and the issue was finally settled by the Larger Bench of the Tribunal in case of **Vandana Global Ltd. (supra),** penalty would not be warranted and the same is set aside.

7. The appeal stands disposed of in the above terms. The Original Adjudicating Authority is directed to re-quantify the Cenvat credit demand in terms of the above directions.

[Order dictated & pronounced in open court on 9.11.2011].

(Rakesh Kumar)
Member (Technical)

Ckp.