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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/1834/2011 – SM[BR] E/ STAY / 2413 / 2011-SM[BR]** Date **23/12/2011**

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

To :
M/S SHRI BAJRANGBALI INGOT & STEELS PVT. LTD.
PLOT NO. 105, PHASE-II, SILTARA INDUSTRIAL
AREA, DISTT. RAIPUR (CHATTISGARH)

M/S SHRI BAJRANGBALI INGOT & STEELS PVT. LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 927/2011-SM[BR]&S/869/2011** dated 1.12.2011 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

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 (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.

Date of hearing/decision 01.12.2011

Excise Appeal No. 1834 of 2011-SM with
Excise Stay Application No. 2413 of 2011-SM
(Arising out of order in appeal No. 72/RPR-I/2011 dated 25.04.2011 passed by the Commissioner (Appeals-I) Central Excise & Customs, Raipur).

M/s Shri Bajrangbali Ingot & Steels Pvt. Ltd. Appellants

Vs.

CCE, Raipur Respondent

Appearance: Rep. by Sh. Bipin Garg, Advocate for the appellants.
Rep. by Sh. S.K. Panda, Jt. CDR for the respondent.

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

Final ORDER NO. 927/2011 SM (BR) &
S - 869/2011 SM (BR)

Per: Shri D. N. Panda:

Learned Counsel submits that when it was brought to the notice of the authority that erection and commissioning was done using angles, channels and beam, the authority below could not find any evidence to contravert the same. It is merely stated by that authority in the order that the goods in question were used in structural supports for making the crane functional. Therefore, mere observations without any evidence should not cause prejudice to the assessee.

2. Learned Jt. CDR on the other hand brings out that in para 5.4 and 5.6 of the appellate order, the authority has made observation that claim

of the appellant is unsustainable in view of the materials in question utilized for structural support and the support were embedded to earth.

3. Heard both sides and perused the record. The matter is in controversy on the evidence calling for test thereof as to whether the impugned goods gave rise to any capital goods. Orders of the authority below is not clear as to the claim of the goods whether used for structural or used to make affixture to the building to become immovable property or used for manufacturing capital goods. No resolution of dispute at the second appellate stage is possible without clear factual aspects and evidence available on record.

4. For no clarity as stated above keeping the appeal pending in Tribunal shall serve no useful purpose. In the meantime, various judgements on the subject have been pronounced. Few of such judgements are **CCE, Mysore vs. ICL Sugars Ltd. (Kar.)** and Larger Bench in **Vandana Global Ltd. vs. CCE, Raipur** reported in 2010 (253) ELT 440 (Tri. LB). So also Apex Court has delivered judgement in the case of **Saraswati Sugar Mills vs. CCE, Delhi-III** reported in 2011 (270) ELT 465 (SC) and **CCE, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd.** reported in 2010 (255) ELT 481 (S.C.). These judgements provide guideline to decide the controversy of like nature.

5. Scrutiny of evidence as to utilization of the impugned goods is required at grass root level. Therefore, dispensing pre-deposit, the matter is remitted back to the learned Adjudicating authority for

granting fair opportunity of hearing to the appellant and pass a reasoned and speaking order upon hearing and considering the following:-

(i) Quantity of material and value thereof used. ~~on~~

(ii) Use of different types of goods with evidence.

(iii) Whether the goods enjoy cenvat credit?

6. If the above three distinct points are brought on record and facts are tested on the light of the law laid down by aforesaid judgements and statute law, there may not be further litigation. Learned Counsel mentions that since the matter is decided to be remitted, point of limitation may be kept open for argument. This being a mixed question of fact and law, appellant shall get opportunity to argue on this aspect during re-adjudication.

7. In the result, both stay application and appeal are disposed of in the terms and manner indicated above.

[D.N. Panda]
Judicial Member

Pant