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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/985 /2009 – SM[BR] Date **24/12/2010**

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

To :
M/S REAL ISPAT & POWER LTD.
URLA BENDRI ROAD, BORJHARA, RAIPUR (C.G.)

M/S REAL ISPAT & POWER LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1475 / 2010-SM[BR] dated 27.10.2010 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.RAMESH NAIR
LAKSHMI VIHAR, AG- 192,
SCHEME NO. 54, VIJAYNAGAR,
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.985/09-SM

(Arising out of order in original No.Comm/RPR/6/09 dated 15.1.09 passed by the Commissioner of Central Excise, Chandigarh)

Date of Hearing: 27.10.2010

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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 Real Ispat & Power Ltd — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Shri Anurag Barthwal, Advocate
Appeared for the Respondent: Shri Anil Khanna, SDR

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

Final ORDER - 1475/2010 SM (BR)

Per Archana Wadhwa:

After hearing both the sides, I find that modvat credit availed in respect of fuel used in generation of electricity stands denied by the authorities below on the ground that a part of the electricity so generated, was diverted to residential premises as also wheel~~ing~~ed out to sister units.

2. Learned Advocate Shri Anurag Bharthawal appearing for the appellant fairly concedes that the issue stands decided against them in the case of Maruti Suzuki Ltd Vs CCE Delhi-III reported in 2009 (240) ELT 641 (SC). The Hon'ble Supreme Court laying do~~ne~~wn that assessee is not entitled to avail credit in respect of inputs used in the manufacture of electricity or ~~steel~~ steam, a part of which stands cleared outside the factory premises in favour of Joint venture, ~~fixtures~~ etc. By following the law declared by the Hon'ble Supreme Court, I confirm the demand of duty against the appellant.

3. As regards the penalty, it stands observed by the Hon'ble Supreme Court in the above referred matter that on account of repeated amendment in the Cenvat credit, huge litigation in the country stands generated. In the circumstances, penalty is not leviable on the assessee particularly when on account of difference of views, the assessee have also succeeded in other matter.

4. In view of the above, I find no reason to impose~~d~~ penalty on the appellant. The same is accordingly set aside. The appeal is disposed of~~f~~ in the above terms.

(ARCHANA WADHWA)
Judicial Member

MPS*