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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/41 /2008 – SM [BR] Date 05/01/2010

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 PRAKASH INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 3 / 2010-SM[BR] dated 31.12.2009 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 PRAKASH INDUSTRIES LTD.
   POST - CHAMPA, DIST-JANGJGIR CHAMPA, CHATTISGARH
2. Adv. / Consult SHRI ROHIT CHOUDHARY ADV.
   N/V;------------------------------------

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.41/2008-SM(Br)

(Arising out of order in appeal No.196/RPR/I/2007 dated 24.9.07 passed by the Commissioner of Central Excise (Appeals), Raipur)

CCE, Raipur — Appellant

Vs

M/ Prakash Industries Ltd — Respondent

Appeared for Appellant : Shri S.K. Bhaskar, DR
Appeared for Respondent : Shri Rohit Choudhary, Advocate

Date of Hearing: 14.12.09

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

Final Order No. 03/2010 SM(Br) ~~/2009~~

Per D.N. Panda:

Both sides agree that use of welding electrodes is factually to be tested as to whether used in manufacture of capital goods to resolve the dispute. They also agree that Tribunal has decided the issue relating to Cenvat credit on welding electrodes in the case of Vikram Cement Vs CCE Indore reported in 2009 (242) ELT 545 taking into consideration all the judgments available on the date of that decision.

2. Learned Counsel for respondent is very fair to state that when law has been laid down by the Tribunal on the above issue, the respondent has no hesitation for appropriate factual finding if the matter is remanded which shall resolve such recurring issues.

3. Having heard both sides and with the proposal aforesaid by respondent and also considering learned Counsel's averment that similar such matters are waiting decision, in view of remand in Appeal case No. E/3250/07 disposed on 16.11.2009 relating to the period June 2000 to January 2006, this matter should also go back to the learned adjudicating authority for proper decision in respect of the earlier matter and the present matter. However, it is made clear that direction in Appeal No.3250/-07 if any, is not touched by this order. Decision therein made shall independently govern that matter as directed by the Tribunal. Since the matter has been placed across the bar that the earlier appeal and present appeal are in the similar, it is made clear that facts and circumstances of each case shall be considered for its decision.

4. With the aforesaid observations setting aside order of both the authorities, the matter is remanded to the learned adjudicating authority for fresh decision in the light of the decision of Tribunal in the case of Vikram Cement (supra) and a reasoned and speaking order passed granting fair opportunity of hearing to the respondent.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*