TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1121/2008 – SM[BR] Date 23/09/2010

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

To :
M/S HIRA POWER AND STEELS LTD.
UNIT NO.II,URLA INDUSTRIAL COMPLEX,RAIPUR
(C.G.)

M/S HIRA POWER AND STEELS LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1032 / 2010-SM[BR] dated 14.9.2010 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.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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
Excise Appeal No.E/1121/2008-SM

(Arising out of Order-in-Appeal No.19/RPR/-I/2008 dated 26.02.2008 passed by the Commissioner of Central Excise (Appeals), Raipur)

Date of Hearing/Decision:06.08.2010

M/s.Hira Power & Steel Limited — Appellant

Vs.

CCE, Raipur — Respondent

Present for the Appellant: Shri Hemant Bajaj, Advocate
Present for the Respondent: Shri S.R.Meena, SDR

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

Final **ORDER NO.** 1032/2010 SM (Br)

PER: D.N.PANDA

Short dispute in this case arising for consideration is whether the goods which were initially found to be not viable for commercial use, if used later can credit be denied when the output emerging therefrom has suffered excise duty. When such is the question, Revenue has no evidence to answer negatively. Application was made by the assessee on 24.04.2007 submitting to the learned Authority Below that in view of contingency, the goods of above kind were used and manufacture of output was made which has suffered duty

2. Learned Counsel submitted that the letter dated 24.4.2007 was well before the adjudicating authority who did not take cognizance thereof for which the appellant suffered. But only submission of Revenue was that there was no output manufactured using the goods in question for which cenvat credit shall not be admissible.

3. It is noticed that application was made on 24.4.2007 which was six months before the adjudication was done. When adjudication was completed by Order-in-Original dated 15.10.2007, there was no trial run witnessed by Revenue to ascertain whether the goods in question were not usable. Records have not been examined to show that the goods in question were not used and had not resulted with dutiable manufactured output. When such is the feature of this case and Revenue did not rule out usability of the goods in question in manufacture, then the goods manufactured out of use of the goods in question which were subject matter of letter dated 24.4.2007 calls for avoiding cascading effect. Therefore the appeal succeeds and is allowed.

(D.N.Panda)
Judicial Member

mk