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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/982 /2005 - EX[DB]

Date 18/05/2010

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

To :
M/S VISHWAKARMA ISPAT LTD.
VILLAGE-KANGANWAL, P.O. JUGIANA, DISTT.
LUDHIANA

M/S VISHWAKARMA ISPAT LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 385/ **2010 EX[DB]** dated 06-5-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 C.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 Office Copy
14 Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

PRINCIPAL BENCH - COURT NO. I

Excise Appeal No. E/982/05-Ex. (Br.)

[Arising out of Order-in-Appeal No.19/CE/Appeal/LDH/05 dated 25.1.2005 passed by the Commissioner (Appeals) of Central Excise, Ludhiana].

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	yes
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. Vishwakarma Ispat Ltd. ...Appellants

Vs.

CCE, Ludhiana ... Respondent

Present for the Appellants : None
Present for the Respondent : Shri Sunil Kumar, DR

Coram: **Hon'ble Mr.Justice R.M.S. Khandeparkar, President**
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/Decision:06.05.2010

FINAL **ORAL ORDER NO.** 385/10-EX **DATED:06.05.2010**

PER: JUSTICE R.M.S.KHANDEPARKAR

None present for the appellants. Shri Sunil Kumar, DR presents for the respondent. With the help of ld. DR, we have perused the records including the orders passed by the lower authorities.

2. The main challenge to the impugned order relates to the finding arrived at by the Commissioner (Appeals) to the effect that "no differential duty is demandable from M/s. VAL i.e. supplier of the inputs so modvat credit of differential duty amounting to Rs.11,40,037/- is not admissible to the appellants."

3. Perusal of the Memo of appeal discloses that the said impugned order based on the above quoted finding is sought to be challenged by contending that the impugned order as far as it relates to denial of modvat credit, is erroneous as the Commissioner (Appeals) failed to appreciate that as far as the appellants are concerned, they had sought to avail the credit on a valid duty paying document and the Department had collected the duty at the suppliers end and therefore, the appellant's right to claim modvat credit to that extent could not have been denied. It is the further contention of the appellants that the Commissioner (Appeals) failed to appreciate the mere fact that he had set aside the order dated 26th November, 2001 was not material for the appellants, in as much as that the appellants had duly discharged their duty burden and that the duty was also collected by the Department and, therefore, the appellants right to claim the modvat credit could not have been held to have extinguished. It is the further contention on behalf of the appellants that since the Department has not refunded the said amount of duty to the

suppliers of the appellants, question of denying the appellants' right to the modvat credit does not arise.

4. The law on the point that the manufacturer can avail the modvat credit only to the extent of the duty paid on the inputs purchased is well settled. In the absence of the inputs being subjected to duty payment question of availing modvat credit by the manufacturer procuring such inputs does not arise. Once the authorities had held that the supplier of the inputs was not subjected to the duty payment, question of appellants seeking to avail modvat credit in respect of inputs so supplied by the supplier cannot arise.

5. In case the supplier had paid the duty wrongly or by mistake, that would only entitle the supplier to seek refund of such amount. But that by itself cannot create any right in favour of the appellants who had procured such duty free inputs. The contentions canvassed as above, on behalf of the respondents are well found and, therefore, we do not find any fault in the impugned order. Therefore, the appeal is liable to be dismissed and is accordingly, dismissed.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita