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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/679 /2009 – SM[BR] Date 04/11/2010

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.
C.C.E. LUCKNOW

Appellant
Vs
M/S BAJAJ HINDUSTAN LTD
Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1153 / 2010-SM[BR] dated 21.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent

   M/S BAJAJ HINDUSTAN LTD

   GOLA GOKARANNATH, DISTT. LAKHIMPUR KHERI. (U.P.)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV**

**Excise Appeal No. 679 of 2009-SM(BR)**

[Arising out of Order-in-Appeal No. 204-CE/LKO/2008 dated 16.12.2008 passed by the Commissioner of Central Excise (Appeals I), Lucknow.]

**For approval and signature:**

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

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Commissioner of Central Excise, Lucknow — Appellants

Vs.

M/s. Bajaj Hindustan Ltd. — Respondent

**Appearance:**
Shri S.K. Bhaskar, DR for the Appellants
Ms. Sukriti Das, Advocates for the Respondent

Date of Hearing/decision : 21.10.2010

Final **ORAL ORDER NO. 1153/2010 SM (Br)**

**Per Ashok Jindal**:

Revenue has filed this appeal against the impugned order wherein the Cenvat Credit on welding electrodes was allowed.

2. The contention of the Revenue is that the Cenvat Credit on welding electrodes is not available to the respondents to the extent which are used for constructing the structure to hold / supporting machinery installed in the plant / sections such as boiling house, mill house, power house and other locations. Hence the impugned be set aside.

3. On the other hand, the learned Advocate for the respondents reiterated the impugned order wherein the Commissioner (Appeals) has observed that welding electrodes are used in fabrication and manufacture of the capital goods during the course of manufacture in the factory.

4. Heard both sides. I have gone through the records placed before me and find that the view taken by the Commissioner (Appeals) is not correct view. As in the defence the respondents have admitted that these welding electrodes are also being used for fabrication of supporting structure which cannot be allowed as per the decision of the Larger Bench of this Tribunal in the case of Vandana Global reported in 2010 (253) ELT 440 (Tri-LB). Hence, the matter needs detailed examination for use of welding electrodes.

5. Accordingly, the impugned order is set aside. The appeal is allowed by way of remand to the adjudicating authority to examine the issue of use of welding electrodes in the light of decision of Vandana Global Ltd. cited

supra after giving reasonable opportunity of hearing to the respondents to present their case.

6. The appeal is allowed by way of remand.

( Ashok Jindal )
Member(Judicial)

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