

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/550 /2009 – SM[BR]

Date 09/11/2010

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

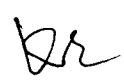
Appellant

Vs

Respondent

M/Ş B.S. SPONGE PVT. LTD.

I am directed to transmit herewith a certified copy of Final order No.1168 / 2010-SM[BR] dated 19.10.2010
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 B.S. SPONGE PVT. LTD.

TARAIMAL, P.O.GERWANI, RAIGARH (C.G)

2. Adv. / Consult SHRI A.JAJU ADV.

M/S RESPONDENT:-----

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 Publications 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. 550 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 6/RPR-I/2008 dated 30.1.2009 passed by the Commissioner of Customs & Central Excise, Raipur.]

For approval and signature:

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

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?
-

Commissioner of Central Excise
Raipur

Appellants

Vs.

M/s. B.S. Sponge (P) Ltd.

Respondent

Appearance:

Shri K.P. Singh, SDR for the Appellants
Shri A.Jaju, Advocate for the Respondent

Date of Hearing/decision : 19.10.2010

final

ORAL ORDER NO. 1168/2010 SM(Br)

Per Ashok Jindal:

Revenue has filed this appeal against the impugned order wherein Cenvat credit taken by the respondents on TMT bars, angles, channels, bar, HR Plates, Cobble plates, rounds, squares, defective rails, shapes and sections, and joists were allowed as inputs to be used in the capital goods. The learned DR submitted that the Larger Bench of this Tribunal has held in the case of Vandana Global Ltd. reported as 2010 (253) ELT 440 (Tri-LB) that the credit on the above said items is not admissible as they does not fall under the definition of capital goods as Rule 2(a) of the Cenvat Credit Rules, 2004.

2. On the other hand, learned Advocate for the respondent submits that in the case of Vandana Global Ltd., this Tribunal has held that when the above said items are used in the fabrication of supporting structures, then Cenvat credit is not allowed but if these items are used for fabrication of plant and machinery, they can be allowed as inputs for capital goods.

3. Heard both sides. Considering the submissions made by both the sides, I find that in the impugned order, it is not clear that for what purpose these items were used by the respondents in their factory. Hence, the matter needs examination by the adjudicating authority in the light of the decision in the case of Vandana Global. Hence, the matter is remanded back to the adjudicating authority to examine the issue of use of the above said items in the light of decision in the case of Vandana Global (supra) after giving reasonable opportunity of hearing to the respondent to present their case.

With these observations after setting aside the impugned order the appeal is allowed by way of remand.

(Ashok Jindal)
Member(Judicial)

SS