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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 / 3278 / 2007 -SM[BR] E / CO/60/2008-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

JINDAL STEEL & POWER LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1200 / 2010-SM[BR] dated 28.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   JINDAL STEEL & POWER LTD
   P.B.NO 16, KHARSIA ROAD, RAIGARH.
2. Adv. / Consult SHRI L.P. ASTHANA ADV.
   R-163 , IIND FLOOR, GREATER KAILASH PART-I
   NEW DELHI-48.
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.3278 of 2007
Excise Cross Objection NO.60 of 2008

(Arising out of Order-in-Appeal No.187/RPR-I/2007 dated 7.9.07 passed by the CCE(A), Raipur)

Date of Hearing: 20.10.2010
Date of Decision: 28.10.2010

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?	

CCE, Raipur — Appellant

Vs.

M/s.Jindal Steel & Power Ltd. — Respondent

Present for the Appellant: Shri L.P.Asthana, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

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

Final **ORDER NO.** 1200/2010 SM BR

PER: ASHOK JINDAL

The Revenue has filed this appeal against the impugned order wherein cenvat credit was allowed by the lower appellate authority on the impugned goods.

2. The facts of the case are that respondent availed cenvat credit on Lattice Steel Structure, Lattice Type Transmission Towers, Hot Dip Lattice Tower, Lattice Type Tower falling under chapter sub-heading No.7308.20 of the Schedule to the Central

Excise Tariff under their capital goods credit account. A show cause notice was issued alleging that as per Rule 2(a) of Cenvat Credit Rules, 2004, these above items are not covered under the term 'capital goods'. Hence the demand was confirmed by the adjudicating authority. On appeal before the lower appellate authority, cenvat credit was allowed on the above said items holding that the same was used as accessories to the group of machines and machineries installed in the steel melting shop and no contrary evidence has been adduced by the Revenue. Aggrieved by the said order, the Revenue is in appeal before this Tribunal.

3. The learned DR appearing on behalf of the Revenue submits that the items under dispute are immovable property as the same are attached to the earth and they are supporting structures of machineries, they cannot be held accessories to the machineries. Further, he relied upon the decision of the Hon'ble High Court of Bombay in the case of TELCO vs. Union of India reported in 1997 (89) ELT 463 (Bom.) wherein it was held that columns, beams, trusses and purlins being sections or portions of a structure coming into existence when affixed or fabricated into structure and becoming immovable in character and not capable of being marketed cannot be regarded as 'goods' eligible to excise duty. He also relied upon the decision of the Apex Court in the case of Quality Steel Tubes Pvt.Ltd. vs. CCE, UP reported in 1995 (75) ELT 17 (SC). Further he relied upon the decision of the Larger Bench of this Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in 2010 (253) ELT 440 (Tri.LB). He finally relied upon the decision of the

Hon'ble Karnataka High Court in the case of Thungabhadra Steel Products Ltd. vs. Union of India reported in 1998 (98) ELT 334 (Kar.).

4. On the other hand, Shri L.P.Asthana, learned Advocate appearing for the respondents submitted that the impugned goods are accessories to their machineries and has been rightly allowed by the lower appellate authority. He also field photograph of these impugned goods showing they are accessories to their main machineries. He also relied upon the case law in the case of CCE, Jaipur vs. M/s. Rajasthan Spinning & Weaving Mills Ltd. in Civil Appeal No.3760 of 2003 dated 9.7.2010 wherein the Apex Court has held that the assessee is entitled to avail of modvat credit in respect of steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods. He also relied upon the decision of the Apex Court in the case of Mehra Bros vs. Join Commercial Officer reported in 1991 (51) ELT 173 (SC) wherein the Apex Court has held that the articles usable with other parts of main article also accessory. Accordingly, he prayed that the impugned order is to be upheld.

5. On careful examination of the submissions made by both sides, I find that in the facts and circumstances of the case, the issue is whether impugned items, namely, Lattice Steel Structure, Lattice Type Transmission Towers, Hot Dip Lattice Tower, Lattice Type Tower are entitled for availing cenvat credit or not?

6. The lower appellate authority has held that the items are accessories to the main plant and they are eligible for cenvat credit.

7. It is no doubt that as per definition of Section 2(a) of Cenvat Credit Rules, 2004 "components, spares and accessories of the goods specified at (i) and (ii)" are entitled for cenvat credit. The lower appellate authority has allowed cenvat credit holding that the impugned items are accessories.

7.1 Whether these items are accessories or not it is to be examined by the user test as explained by the respondents that "the impugned goods are used for transmission of electricity to a group of machines, such as the circuit breaker, disc insulator, lightening arrester, current transformer, potential transformer, incomer/outgoing feeder control panel and relay bus P.P. panel, transformer control panel and relay panel, multifunctional meter and busducts."

7.2. These electrical items are indispensable for carrying out the process of providing stabilized electric power to the production machinery engaged in the manufacture of iron and steel products within the factory. In another words, the impugned goods are used for effective use of the electrical items which contribute not only to the process of stabilizing the electric power generated in the factory but also leads to manufacture of excisable iron and steel products.

7.3. It is also seen that the impugned goods are very much required for compliance to the provisions of Chapter VIII containing Rule 74 to 93 of the Indian Electricity Rules, 1956 according to which distance and height of the electrical items as prescribed in the said rules are to be maintained and the case of Rajasthaan Spinning & Weaving Mills Ltd. (supra) the Apex Court observed that the user test is to be followed to allow the credit.

8. I have seen from the above submission that the impugned goods are nothing but accessories of electrical items as defined by the Apex Court in the case of Mehra Bros vs.Joint Commercial Officer wherein it was held that 'accessory' means an object or device that it is not essential in itself but that which addes to he beauty or convenience or effectiveness of something else or is supplementary or secondary or something of greater or primary importance which assists in operating or controlling or may serve as aid to a accessory. Hence, these items are qualified as accessories of capital goods and the same are entitled for input credit. Accordingly, the finding of the lower appellate authority that the impugned goods are accessories to a group of machineries is correct. Hence, I do not find any reason to interfere with the impugned order.

9. The impugned order is upheld and the appeal field by the Revenue is rejected.

10. The cross objection are also disposed of in the above manner.

(Pronounced in the open court on 28.10.2010)

(ASHOK JINDAL)
MEMBER (JUDICIAL)