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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/1487/2010 – SM[BR] E / STAY/1518 / 2010-SM[BR] Date 15/11/2010

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

To :
M/S. BWL LTD.
ACC CHOWK, NANDINI ROAD, BHILAI, DISTT. DURG (CG)

M/S. BWL LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1229/2010-SM[BR]&S/531/2010 dated 1.11.2010 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.L.P ASTHANA
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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.2, R. K. Puram, New Delhi
COURT-IV

Date of hearing/decision: **1.11.2010**

Excise stay No. 1518 of 2010-SM & Excise Appeal No. 1487 of 2010-SM

[Arising out of order-in-Appeal No. 27/RPR-II/2010 dated 11.3.2010 passed by the Commissioner of Central Excise (Appeals), Raipur]

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, 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?	

M/s BWL Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance :

Appeared for Appellant : Ms. Neha Gulati, Advocate
Appeared for Respondent: Shri S.K. Bhaskar, SDR

CORAM: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Final Order No. 1229/2010 SM(BR) & S/531/2010 SM(BR) dated............

Per Archana Wadhwa:

The prayer in the application is to dispense with the pre-deposit of duty amount of Rs.62,992/- and penalty of Rs.5,000/-. The said demand stands confirmed against the appellant by denying them to avail the credit in respect of MS angles, Channel, beam, plate etc. used for manufacture of storage tanks.

2. Though the issue prima facie seems to be covered against the appellant by the Larger Bench of the Tribunal in the case of **Vandna Global Vs. CCE** reported in 2010 (253) ELT 440 (Tri.- LB). I find that the Show Cause Notice, for the period May 2005 to September 2007, was issued on 9.2.2009. Ld. Advocate appearing for the appellant assails the impugned order on the point of limitation.

3. After having heard both the sides, I find that the Deputy Commissioner in his impugned order in original has observed as under :-

> "However, in absence of any intention to evade payment of duty and the matter of admissibility of CENVAT Credit being disputed involving legal interpretations, I hold that the facts and the circumstances of the case do not attract any severe penalty as proposed under Section 11AC of the said Act. I am, therefore, constrained to take a lenient view in so far as imposition of penalty is concerned."

4. As is clear from the above, the original adjudicating authority has himself not doubted the appellant intentions to evade payment of duty. If that be so, the longer period of limitation cannot be held to be available to the Revenue. The Show Cause Notice having been issued on 9.2.09 for the period May 2005 to September 2007 is clearly barred by limitation. As such, I am of the view that the appeal has to be allowed on limitation as fact. Accordingly, after allowing the stay petition, I proceed to decide with the appeal, set

aside the impugned order and allow the same with consequential relief to the appellant. Stay petition as also appeal get disposed of in the above manner.

(Dictated & pronounced in open Court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RM