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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/1242/2008 – SM[BR] Date 16/11/2010

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

To :
M/S VVS CONCAST LTD.(UNIT-II)
48-50, UPSIDC INDUSTRIAL AREA, MALWAN,
FATEHPUR (U.P.)

M/S VVS CONCAST LTD.(UNIT-II) Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1244 / 2010-SM[BR] dated 26.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.AMIT AWASTHI
   H-1, IST FLOOR, RADHEY APPARTMENT PLOT NO. 7/116A, SWAROOP NAGAR, KANPUR-208002
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.1242 of 2008

(Arising out of Order-in-Appeal No.29-CE/LKO/2008 dated 29.02.08 passed by the CCE (A), Lucknow)

Date of Hearing: 26.10.2010
Date of Decision: 26.10.2010

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?	

M/s.VVS Concast Ltd. Appellant

Vs.

CCE, Lucknow Respondent

Present for the Appellant: Shri Sukriti Das, Advocate
Present for the Respondent: Shri S.K.Bhaskar, SDR

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

Final **ORDER NO.** 1244/2010 SM(BR)

PER: ASHOK JINDAL

This appeal is directed against the duty demand and imposition of penalty on the appellant by the impugned order.

2. The facts of the case are that on scrutiny of the records for the period from September, 2002 to March, 2004, it was observed that the appellant has availed cenavt credit on billets vide their RG-23A Part-II Entry NO.52/965 dated 16.12.2003 on

the strength of attested/certified photocopy of invoice No.1795 dated 03.10.2003 issued by M/s.Super Smelters Ltd., which is not a prescribed document under Rule 7(1) of Cenvat Credit Rules, 2002. It was also observed that the cenvat credit on the input M.s.Ingots on the strength of photocopy of the invoice No.62 dated 12.06.2003 issued by M/s.Jai Salasar Balaji Industries. Accordingly, the demand was confirmed against the appellants and interest and penalty were also imposed. Aggrieved by the said order, the appellant is in appeal before this Tribunal.

3. Learned Advocate for the appellant submits that the period involved is from September, 2002 to March, 2004 and the show cause notice was issued on 12.2.2007 invoking the extended period of limitation. But from the show cause notice it is not coming out that how the appellant suppressed the facts from the department. Hence, the extended period of limitation is not invokable in this case.

4. On merits, learned Advocate did not advance any argument.

5. On the other hand, leaned DR submitted that the appellant has suppressed the facts from the department and they failed to reply the show cause notice and the contention of the appellant itself shows that they have suppressed the facts from the department with intent to evade duty.

6. Heard and considered.

7. On careful examination of the submissions made from both the side and the impugned order, I find that in the impugned order, it has been alleged that the appellant has suppressed the facts from the department. It is not coming out from the impugned order that how the appellant suppressed the facts from the department. It is also not coming out when the scrutiny of the records was done by the department.

8. In view of these, observations, the matter needs further examination by adjudicating authority on this point. Accordingly, the matter is sent back to the adjudicating authority to investigate whether in the circumstances of the case, the extended period of limitation is invokable or not. The adjudicating authority will decide the issue after giving an opportunity to the appellant to defend their case.

9. Accordingly, the impugned order is set aside and the appeal is allowed by way of remand.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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