

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/3176/2006 , E / 1910 /2007, E/ 2134 /2007 WITH/COD/318/2007&E/CO/253/2007 Date 13/07/2010
E / 1166 /2008 WITH E/ CO / 377 / 2008 -SM[BR]

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

To :
C.C.E.RAIPUR

DHAMTARI ROAD,TIKRAPARA,RAIPUR.

C.C.E.RAIPUR

Appellant

Vs

Respondent

M/S HIRA FERRO ALLOYS LTD

I am directed to transmit herewith a certified copy of Final order No. 741 – 744 / 2010 –SM[BR] dated 6.7.2010
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Copy to :

1. Respondent

Assistant Registrar
(SM Appeal Branch)

M/S HIRA FERRO ALLOYS LTD
UNIT II,URLA INDUSTRIAL AREA,RAIPUR(CG)

[2] M/S SHRI SHYAM ISPAT [I] LTD.
VILLAGE-TARAIMAL GHARGHODA ROAD
DIST. RAIGARH C.G]

2. Adv. / Consult
MR.K.K ANAND

[3] M/S B.E.C. STRIPS [P] LTD.
INDUSTRIAL ESTATE, NEAR CHHAWANI
CHOWK, BHILAI, DISTT-DURG [CG]

A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

[4] M/S K.M.SUGAR MILLS LTD.
FAIZABAD [U.P]

3 S.D.R

[2] SHRI S.P. OJHA CONSULTANT.

4 J.C.D.R.

299, BAGHAMBARI, HOUSING SCHME, ALLAHAPUR, ALLAHBAD[UP]

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 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New
Delhi - 110070

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 6.7.2010

Sl No	Appeal No.	Appellant	Respondent	Arising out of the order in appeal No. and date	Passed by
1.	E/3176/06	C.C.E., Raipur	Hira Ferro Alloys Ltd.	114/RPR-I/2006 dated 20.6.06	Commissioner (Appeals), Customs & Central Excise, Raipur
2.	E/1910/07	- do -	Shri Shyam Isppat (I) Pvt. Ltd.	88/RPR-I/2007 dated 30.3.07	- do -
3.	E/2134/07 With E/COD/318/07 and E/CO/253/07	-do-	B.E.C. Strips (P) Ltd.	64 & 65/RPR-II/2007 dated 19.3.07	- do -
4.	E/1166/08 with E/CO/377/08	C.C.E., Allahabad	K.M. Sugar Mills Ltd.	20-CE/ALLD/2008 dated 29.1.08	Commissioner (Appeals), Central Excise, Allahabad

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appearance:

Shri I. Baig , Shri R.K. Gutpa and Shri S.K. Bhaskar Authorised Departmental Representatives (DRs) for the Revenue
Ms. Asmita Nayak, Advocate for the respondent at serial Nos.1 & 3,
None for serial No.2 and Shri S.P. Ojha, Consultant for the respondent at serial No.4

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

final Oral Order No. 741² - 744/2010 SM (Br)

Per M. Veeraiyan:

These appeals involving common issues and are accordingly being disposed of by this common order.

Appeal No.E/3176/06

2.1 The relevant facts, in brief, are that the respondents used M.S. Angles, channels, joist, flats, plats etc. for fabrication of structures, building foundation and shed. The original authority held that the items are not eligible for modvat credit and accordingly, confirmed the demand of Rs.5,05,580/- along with interest and imposed a penalty of Rs.50,000/-. The Commissioner (Appeals) has set aside the order of the original authority.

2.2 Learned DR submits that the impugned items are not eligible for credit as settled by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. C.C.E., Raipur reported in 2010 (253) ELT 440.

2.3 Learned Advocate for the respondents submits that the impugned items have been used in the manufacture of electric arc furnace and therefore covered by the exception mentioned in para 50 of the decision of the Larger Bench in the case of Vandana Global Ltd.

Appeal No.E/1910/07

3.1 The relevant facts, in brief, are that the respondents procured M.S. angles, M.S. channels, joist, CR Coils, flats, HR plate, M.S. flat etc. and utilised them for fabrication of kiln, electro static precipitator and Air Recuperator (Heat Exchanger). The original authority holding that the items cannot be considered as capital goods denied the credit and demanded duty of Rs.4,36,03/- along with interest and imposed equal amount as penalty. The duty demand relates to the period May 2005 to August, 2005 raised by show cause notice dated 2nd June, 2006. Commissioner (Appeals) set aside the order of the original authority.

3.2. Learned DR submits that the impugned items are not eligible for credit as settled by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. C.C.E., Raipur reported in 2010 (253) ELT 440.

3.3 None appears for the respondents.

**Appeal No.E/2134/07 with Condonation Application
No.E/COD/318/07 and Cross-Objection No.E/CO/253/07**

4.1 This appeal is by the Department against the order of Commissioner (Appeals) No.64 & 65/RPR-II/2007 dated 19.3.2007. Cross-Objection No.253/07 with COD No.318/07 is connected to this appeal. Cross-objection has been filed after a delay of 15 days and therefore, an application seeking condonation of delay in filing cross-objection is filed. Considering the grounds in the application for condonation of delay in filing the cross-objection is condoned. The cross-objection is basically in support of the order of the Commissioner (Appeals) and does not seek any relief other than what was granted by the Commissioner (Appeals).

4.2 The respondents procured steel items like angles, channels, flats, joist, M.S. plates and used the same in fabricating furnace and rolling mill. Show cause notice dated 6.6.06 was issued demanding duty of Rs.1,03,574/- and show cause notice dated 20.6.06 was issued demanding Rs.20,607/- both relating to the period November 2001 to July 2003.

4.3 Learned DR submits that the impugned items having been used in structures/support structures could not be called as capital goods and are not eligible for credit as settled by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. C.C.E., Raipur reported in 2010 (253) ELT 440.

4.4 Learned Advocate for the respondents submits that the issue relating to eligibility of credit has been the subject matter of differing decisions by the Tribunal and the question of invoking extended period of limitation does not arise and the entire demand is time-barred.

Appeal No.E/1166/08 with Cross-Objection No.E/CO/377/08

5.1 This appeal is by the Department against the order of the Commissioner (Appeals) No.20-CE/ALLD/2008 dated 29.1.2008. Cross-objection NO.377/08 is connected to this appeal. Learned Consultant fairly concedes that the cross-objection is basically in support of the order of the Commissioner (Appeals) and does not claim any relief other than what was given by the Commissioner (Appeals).

5.2 Facts, in brief, are that the respondents procured M.S. bars and used the same for structural purposes. The original authority apart from confirming the demand of Rs.51,099/- along with interest imposed equal amount as penalty.

5.3 Learned DR submits that the impugned items are not eligible for credit as they are used for structural purposes.

5.4 Learned Consultant submits that there is no question of imposition of any penalty as decisions on this issue were also in favour of the assessee during the relevant period.

6.1 I have carefully considered the submissions by the learned DRs and also the learned Representatives appearing for the respondents and perused the records.

6.2 The issue on steel items used for fabrication of supporting structures or in foundation or fabrication of shed etc. has already been decided by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. cited supra.

6.3 The Larger Bench of the Tribunal in the case of Vandana Global Ltd. considered the following questions:

(a) Whether the term "capital goods" can include plant, structures embedded to earth?

(b) Whether the goods like angles, joists, beam, channels, bars, flats which go into fabrication of such structures can be treated as 'inputs' in relation to their final products as inputs for capital goods, or none of the above?

(c) Whether the credit can be allowed in respect of goods like angles, joists, beam, channels, bars, flats which go into fabrication of such structures and plant?

Following are the salient features of the decision of the Larger Bench :-

- a) ***It disapproved the decision of the Tribunal in the case of Bhushan Steel and Strips Ltd. vs. CCE, Raigad [2008 (223) ELT 517 (Tri-Mum)] which allowed credit on cement and steel used for providing foundation of machines, structures, tunnels, trenches, cellars and factory building essential for steel rolling mills and also allowed credit on roofing material;***
- b) ***It endorsed the decision of the Tribunal in the case of Vikram Cement vs. CCE, Indore [2009 (242) ELT 548] wherein it has been held that "If the inputs were to include every product under the sun which is somehow related to the premises where the manufacturing process goes on, then there is no need to provide a definition of the term capital goods and, therefore, the acceptance of the contention on behalf of the appellants would render the definition of the term the capital goods to be redundant as well as the provisions relating to extending the benefit of Cenvat credit to the capital goods."***
- c) ***It reiterated the need for the nexus between inputs and final products in or in relation to process of manufacture as a condition for eligibility to credit as held by the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. vs. CCE [2009 (240) ELT 641 SC].***
- d) ***It held that amendment to Explanation 2 to Rule 2(k) of Cenvat Credit Rules, 2004 is a clarificatory amendment and that the same is applicable retrospectively.***
- e) ***It was also held that the foundation and supporting structures are neither inputs nor components, spares and accessories of machinery, nor have they been listed for such inclusion in the definition of capital goods.***

With the above findings and observations, the question referred to Larger Bench were answered as follows:

"49. In the light of the foregoing findings, we answer the questions referred to the Larger Bench as follows:-

- (a) ***The terms "capital goods" has been defined in the Cenvat Credit Rules, which in turn have been framed under the rule making powers conferred under Section 37(2) of the Act. The said Section refers to credit of duty paid on goods used in, or in relation to the manufacture of excisable goods. Hence, 'capital goods' defined in the Cenvat Credit Rules in the context of providing credit of duty paid, have to be excisable goods. Whether a particular plant or structure embedded to earth can be considered as excisable goods or not has to be***

determined in the light of the decisions of the Hon'ble Supreme Court on the issue, which is no longer res integra.

(b) Goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated either as inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the Cenvat Credit Rules for the impugned period."

7. Considering the items and their use as detailed in the facts in each appeal, I find that the impugned items cannot be considered as capital goods and therefore, as held by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. credit is not admissible. Therefore, the Department, on merit succeeds in all these appeals.

8. However, in Appeal No.E/2134/07, it is noticed that the demand relates to the period Nov. 2001 to July 2003 raised by show cause notices issued in June, 2006 invoking the extended period of limitation. In the facts and circumstances of the case, the question of respondents suppressing any relevant facts justifying invocation of extended period does not arise. Therefore, the demand has to be within normal period of limitation.

9. Further, during the relevant period, there were contrary decisions relating to eligibility of credit on the impugned items. Under these circumstances, the belief entertained by the respondents that they were eligible for credit has to be held to be bona fide and therefore, the question of sustaining any penalty does not arise.

10. In view of the above, the appeals are disposed of as follows:-

a) Appeal No.E/3176/06 is disposed of by setting aside the order of Commissioner (Appeals) and restoring the order of the original authority in so far as the same relates to the demand of Rs.5,05,580/- along with interest.

b) Appeal No.E/1910/07 is allowed partly by setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority in so far the same relates to the demand of Rs.4,27,454/- along with interest.

c) Appeal No.E/2134/07 is allowed on merits as far as the demand is concerned but the same is held to be time-barred, and therefore, no demand as upheld by the original authority survives. In other words, there is no need to interfere with the impugned order though on different grounds. In view of the above, cross-objection No.253/07 is also disposed of.

d) Appeal No.E/1166/08 is partly allowed by setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority in so far as the same relates to the demand of duty of Rs.51,099/- along with interest. Cross-objection No.377/07 is also disposed of.

11. It is clarified that while restoring the demand in Appeal No.E/3176/06, 1910/07 and 1166/08, the orders of the original authority in so far as the same relate to imposition of penalties are concerned, the same are not restored.

(M. Veeraiyan)
Technical Member

scd/