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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

Date 15/07/2010

Appeal No. E/936 /2008 – SM[BR]

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW. Appellant
Vs
C.C.E. LUCKNOW Respondent

M/S KISAN SAHKARI CHINI MILLS LTD.

I am directed to transmit herewith a certified copy of **Final order** No. 748 / 2010 –SM[BR] dated 7.7.2010 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 KISAN SAHKARI CHINI MILLS LTD.
TILHAR,DISTT. SHAHJAHANPUR. (U.P.)
2. Adv. / Consult
MR.PRAKASH KUMAR SINGH
112, LAWYER CHAMBER,SUPREME COURT OF INDIA,N.DELHI
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 (Harvana)
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. 936 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 08/CE/LKO/08 dated 30.1.2008 passed by the Commissioner of Central Excise & Service Tax, Lucknow]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

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

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Commissioner of Central Excise
Lucknow — Appellants

Vs.

M/s. Kisan Sahkari Chini Mills Ltd. — Respondent

Appearance: Shri S.K. Bhaskar, DR for the Appellants
None for the Respondent

Date of Hearing /decision: 7.7.2010

Final **ORAL ORDER NO. 748/2010 SM(BR)**

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 08/C E/LKO/08, dated 30.1.2008 by which the order of the original authority dated 29.9.06 which was in favour of the assessee was upheld.

2. Heard the learned DR. None appears for the respondents. On 6.4.2010, the matter was adjourned specifically to 7.7.2010 at the request of the advocate for the respondents. The respondents have received steel items namely, MS plates, hot strips, MS angles, channels and reportedly used in construction /fabrication of units fixed to the ground. Accordingly, a show cause notice dated 1.7.2005 was issued proposing recovery of Cenvat Credit of Rs.55,485/- along with interest and proposing imposition of penalty. The original authority, after taking into account the submissions of the assessee dropped the proceedings initiated by the show cause notice. Commissioner (Appeals) has upheld the order of the original authority.

3. Learned DR submits that the respondents are not admissible to take Cenvat credit on the impugned items considering the nature of their use as settled by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur as reported in [2010 (253) ELT 440].

4. He also draws my attention to the prayer according to which the matter is sought to be remanded to the lower authorities for re-determination of admissibility of credit in respect of impugned items.

5. I have carefully considered the submissions and perused the records. The department claims that the issue is decided in their favour by the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. cited supra. I find the orders of original authority and the Commissioner (Appeals) are in favour of the party. The show cause notice has not been enclosed. The prayer of the Department is for remand of the matter to the original authority. The respondent is not represented inspite of notice.

6. Under these circumstances, I accede to request of the department and set aside the orders of the Commissioner (Appeals) and original authority and remand the matter to the original authority to consider the issue afresh in the light of the decision of the Tribunal in the case of Vandana Global Ltd. cited supra and after granting reasonable opportunity of hearing to the appellants. All issues are kept open.

7. Appeal is allowed by way of remand.

(M. Veeraiyan)
Member(Technical)

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