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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/955 /2007 – SM[BR] E/CO/ 387/2008 AND E / 1136 / 2007 –SM[BR] Date 19/07/2010

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

M/S MANGAL SPONGE & STEEL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 764 – 765 / 2010 –SM[BR] dated 14.7.2010 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 MANGAL SPONGE & STEEL LTD.
   BELHA, BILASPUR (C.G.)
   [2] M/S GRASIM CEMENT, P.O. GRASIM VIHAR DIST- RAIPUR,[C.G.]
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE,
   NEW DELHI-29.
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 955 of 2007-SM(BR)
Excise Cross Objection No. 387 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 194/RPR-I/2006 dated 31.10.2006 passed by the Commissioner of Central Excise (Appeals), Raipur (CG)]

Commissioner of Central Excise Raipur — Appellants

Vs.

M/s. Mangal Sponge & Steel Ltd.. — Respondents

Excise Appeal No. 1136 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 23/RPR-I/2007 dated 31.1.2007 passed by the Commissioner of Central Excise (Appeals), Raipur (CG)]

Commissioner of Central Excise Raipur — Appellants

Vs.

M/s. Grasim Cement — Respondents

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?	:	NO

Appearance: Shri S.K. Bhaskar, DR for the Appellants
Shri Ravi Raghvan, Advocate for the Respondent

Date of Hearing/decision : 14.07.2010

Final **ORAL ORDER NO. 764-765/2010 SM(BR)**

Per M. Veeraiyan:

Appeal No. E/955/07 is by the department against the order of the Commissioner (Appeals) No. 194/RPR-I/2006 dated 31.10.2006 upholding the order of the original authority which is also in favour of the party. Cross Objection No. 387/2008 is connected to this appeal and basically in support of the order of the Commissioner (Appeals).

1.2 Appeal No. E/1136/07 is by the department against the order of the Commissioner (Appeals) No. 23/RPR-I/2007 dated 31.1.2007 upholding the order of the original authority dated 13.2.2006 which is in favour of the party.

2. Heard both sides.

3. The department has come up in appeal against the concurrent finding of the original authority and Commissioner (Appeals) which is in favour of the parties. The learned DR submits that the authorities below have failed to appreciate the nature of the impugned items and their exact use and allowed credit on items which are not capital goods. He submits that these items are not eligible for credit in the light of decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in [2010 (253) ELT 440 (LB).

4. The learned Advocate fairly submits that the focus of the defence before the authorities below was not on the exact nature of the use of impugned items. However, he strongly supports the order of the authorities below.

5. I have carefully considered the submissions from both sides. From perusal of the order of the authorities below, I find that there is no examination of the relevant facts and no finding on the nature of ~~issue~~ use of the impugned items to enable me to conclude whether the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. cited supra can be applied or not. Prima facie, for some of the impugned items, the credit may not be admissible depending upon the use of impugned items. As the matter requires factual verification regarding the nature of use for the applicability or otherwise of the decision of Vandana Global Ltd. cited supra, I deem it appropriate to set aside the orders of authorities below and remand the matter to the original authority. The original authority shall grant reasonable opportunity of hearing to both sides before taking decision.

6. Both the appeals are allowed by way of remand as above. Cross Objection is also disposed of.

(M. Veeraiyan)
Member(Technical)

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