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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/3304/2006 – SM[BR]　　　　Date 19/07/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH　　　　Appellant
Vs
M/S MODERN STEELS LTD　　　　Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 767 / 2010 –SM[BR] dated 15.7.2010 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 MODERN STEELS LTD
   G.T.ROAD,SIRHIND SIDE,MANDI GOBINDGARH.
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, [BASMENT] LAJPAT NAGAR-III
   NEW DELHI-24.

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-III

SINGLE MEMBER BENCH

Date of hearing/decision: 15.7.2010

Central Excise Appeal No.3304 of 2006-SM

Arising out of the order in appeal No.620/CE/CHD/06 dated 13.7.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

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?	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

C.C.E., Chandigarh .... Appellant

Vs.

M/s Modern Steels Ltd. .... Respondent

Appearance:

Shri S.N. Srivastava, Authorised Departmental Representative (SDR) for the Revenue and Shri Hemant Bajaj, Advocate for the appellant

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

Final Oral Order No. 767/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. 620/CE/CHD/06 dated 13.7.2006.

2. Heard both sides.

3. The original authority disallowed the credit taken on CTD Bars, Angles and Channels as capital goods which were used for fabrication of structures

to support the functioning of EOT Crane. He denied the credit amounting to Rs.79,579/- and ordered recovery of same along with interest and imposed equal as penalty. Commissioner (Appeals) allowed the appeal following his earlier order dated 11.1.1.2004 relating to the same respondents.

4. Learned SDR submits that the respondents are not eligible for the credit in view of the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. C.C.E., Raipur reported in 2010 (253) ELT 440. He also submits that the order of the Commissioner (Appeals) dated 11.11.04 which has been relied upon by the Commissioner (Appeals) stands set aside by the Tribunal vide Final Order No.1750/06-SM(BR.) dated 7.12.2006 in Excise Appeal No.151/2005.

5. Learned Advocate for the respondents submits that since there were differing interpretations of the Tribunal relating to the availability of credit on the impugned items, the question of restoring the penalty does not arise.

6. I have carefully considered the submissions from both sides and perused the records. The impugned order of the Commissioner (Appeals) relies on his earlier order dated 11.11.04 relating to the same respondent on the same issue. The order dated 11.11.2004 of the Commissioner (Appeals) stands set aside by the Tribunal vide order dated 7.12.2006. Further, the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. cited supra disallowing the credit of materials used in supporting structures is squarely applicable to the facts of the present case. In view of the above, the order of the Commissioner (Appeals) in setting aside the demand and interest are not justified. However, as submitted by the learned Advocate, in view of contrary decisions prevailing on the issue which stand settled by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. , the question of restoring penalty does not arise.

7. In view of the above, the appeal of the Department is disposed of by setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority with the following modification:

a) The order of the original authority demanding Rs.79,579/- along with interest is restored.

b) The order imposing penalty of Rs.79,579/- is set aside.

(M. Veeraiyan)
Technical Member

scd/