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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/1250/2007 – SM[BR] Date 30/07/2010

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 HARI OM INGOTS POWER PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 839 / 2010 –SM[BR] dated 21.7.2010 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 HARI OM INGOTS POWER PVT. LTD.
59 & 60, LIGHT INDUSTRIAL AREA, BHILAI, DISTT. DURG (C.G.)
2. Adv. / Consult
NONE;---------------

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: 21.7.2010

Central Excise Appeal No.1250 of 2007-SM

Arising out of the order in appeal No.19/RPR-II/2007 dated 7.2.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur.

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.& C.Ex., Raipur .... Appellant

Vs.

M/s Hari Om Ingots Power (P) Ltd. .... Respondents

Appearance:

Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue and none for the respondent

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

Final Oral Order No. 839/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. 19/RPR-II/2007 dated 7.2.2007 which upheld the order of the original authority which was in favour of the assessee.

2. Heard the learned SDR. There is a written submission dated 18.8.09 made by the respondents seeking decision on merit. .

3. Learned SDR submits that the respondents procured M.S. channels, angle, PF beam, plate, and joist, and used them in the manufacture of supporting structure of crane and top part of the furnace and availed credit. He submits that credit on these items are not available in the light 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 fairly concedes that both the authorities below have proceeded on the finding that the impugned items were used for manufacture of capital goods, and, therefore, there is no certainty about the actual use of the material.

4. I have carefully considered the submissions of the learned SDR and the written submission made on behalf of the respondents.

5. 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."

6. In the present case, both the authorities below have given decision in favour of the respondents. However, there is doubt about the nature of use of the impugned items as to whether they are merely for supporting structure or used for manufacture of any identifiable capital goods. Further, the respondent is not represented before me.

6. In view of the above, I deem it appropriate to set aside the orders of the authorities below and remand the matter to the original authority for fresh consideration in the light of the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. The original authority shall grant reasonable opportunity of hearing to both sides before deciding the matter.

(M. Veeraiyan)
Technical Member

scd/