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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/1443/2010 – SM[BR] E / STAY / 1480 / 2010 –SM[BR] Date 19/08/2010

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

To :
M/S. SANVIJAY ROLLING ENGINEERING LTD.
SILTARA, PHASE-II, SILTARA INDUSTRIAL GROWTH
CENTRE, SILTARA, RAIPUR (CG)

M/S. SANVIJAY ROLLING ENGINEERING LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 900/2010-SM[BR]&S/345/2010 dated 10.8.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI SAURABH YADAV ADV.
   A-103, DEFENCE COLONY 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 No. II

E/STAY NO. 1480 OF 2010-SM IN AND
CENTRAL EXCISE APPEAL NO. 1443 OF 2010-SM

[Arising out of Order-in-Appeal No. 38/RPR-I/2009 dated 28.1.2010 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur]

M/s. Sanvijay Rolling Engg. Ltd., Appellant
Reptd. by Shri Saurabh Yadav, Advocate

Versus

CCE, Raipur Respondent
Reptd. by Shri S.K. Bhaskar, SDR

Date of Hearing/decision: 9th August, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 900/2010 SM(BR) & S-345/2010 SM(BR) **DATED**

Per D.N. Panda:

The present appeal is directed against Order-in-appeal dated 28.1.2010 passed by the Commissioner (Appeals). Along with appeal the appellant has also moved stay application for stay of realization of demand of Rs. 1,32,575/- followed by penalty of equal amount. The demand arose in view of disallowance of Cenvat credit on Joist, Plate, Flat, etc. falling under Chapter 72 of the Central Excise Tariff Act, 1985, which are not entitled to Cenvat credit.

2. Learned Counsel for the appellant submits that the items on which Cenvat credit was availed were used for the purpose of manufacture of their final product. But the audit finding revealed that those items were not entitled to the benefit.

3. Learned D.R. submits that this Tribunal has decided the present issue in the case of Vandana Global Ltd. vs. CCE, Raipur, reported in 2010 (253) ELT 440 (Tri.- LB). Learned adjudicating authority can appropriately adjudicate the matter in accordance with guidelines given in that decision. Therefore, it would be proper to remand the matter to the adjudicating authority to decide the issue in accordance with law instead of keeping the matter pending here.

4. Heard learned D.R. He is very correct to say that the demand arose under a confusion. There is no doubt that the issue is covered by the decision of the Larger Bench of the Tribunal in the case of Vandana Global (supra). There is also a decision of Hon'ble Supreme Court in the case of CCE, Jaipur vs. Rajasthan Spg. & Wvg. Mills Ltd., reported in 2010 (255) ELT 481 (SC) on a similar set of issue. Therefore, dispensing with pre-deposit, the matter is remanded to the learned Adjudicating authority to decide the issue afresh granting fair opportunity of hearing to the appellant and in the light of above two judgments and passing a reasoned and speaking order within 3 months

of receipt of this order. In the result, stay application as well as appeal are disposed off.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK