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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/2488/2004 – SM[BR]** Date **22/06/2011**

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

BHILAI STEEL PLANT Respondent

I am directed to transmit herewith a certified copy of **Final order No. 331 / 2011-SM[BR]** dated 16.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
BHILAI STEEL PLANT
(A UNIT OF M/S SAIL BHILAI (C.G.)

2. Adv. / Consult SHRI V.LAKSMIKUMARN ADV.
B-6/10SAFDARJUNG ENCLAVE NEW DELHI-29.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Excise Appeal No.E/2488/04-SM

(Arsing out of Order-in-Appeal No.73/RPR-II/2004 dated 20.2.2004 passed by the CCE (A), Raipur)

For approval and signature:
Hon'ble Mr.M.Veeraiyan, Member (Technical)

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?	Yes
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

CCE, Raipur — Appellants

Vs.

M/s.Bhilai Steel Plant — Respondent

Present for the Appellant: Shri R.K.Gupta, SDR
Present for the Respondent: Shri Hemant Bajaj, Advocate

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

Date of Hearing/decision: 16.06.2011

Final **ORDER NO.** 331/2011 SM (BR)

PER: M.VEERAIYAN

This is an appeal by the department against the order-in-appeal No.73/RPR-II/2004 dated 20.2.2004 on the ground that in respect of certain inputs the Commissioner (Appeals) instead of giving firm finding as to the eligibility or otherwise of credit remanded the matter to the original authority for fresh consideration.

2. Heard both sides.

4.1 Learned SDR submits that the Commissioner (Appeals) does not have power of remand as settled by Hon'ble Supreme Court in the case of MIL India Ltd. vs. CCE, Noida reported in 2007 (210) ELT 188 after amendment dated 11.5.2001 to Section 35A of the Act.

4.2 He submits that they are aggrieved with only part of the order by which the Commissioner (Appeals) has remanded the matter to the original authority for fresh consideration.

5. The Commissioner (Appeals) has sent the matter relating to admissibility of credit in respect of certain items for factual verification. The disputed items and his findings are as follows:-

"Inputs:
Pickling Preparations for the Metal Surfaces (3810.00), Fluxes and other auxiliary preparations, Wire Rods, Tubes Plated, Electrodes and Similar products of Base metal or carbides, coated and cored with Flux material of kind used for soldering, brazing or deposition of metal or of metal carbides.
Finding:
Aforesaid items are admittedly used for the manufacture of capital goods which is subsequently used for manufacture of final goods inside the plant in terms of Rule 57D(2) of Central Excise Rules, 1944.
Credit on the goods availed for the purpose of repair and maintenance is not admissible. If the items are used outside the factory premises, credit on the same is not admissible.

Inputs:

Flat Rolled Products of Iron or Non-alloy or Stainless Steel or other Alloy Steel; Hot Rolled Cold Rolled (cold reduced) clad or not clad, placed or coated, Bars 7 Rods of iron and non-alloy steel or stainless steel, angles, shapes & section of iron or non-alloy steel or stainless steel or other alloy steel.

Finding:

Credit on the said items are admissible if used within the factory for the manufacture of various capital for their subsequent use in the manufacture of the final products or the for clearance on payment of duty. Credit is not admissible if the items are used for the purpose of other than the above."

6. Learned SDR fairly conceded that in the grounds of appeal there is no specific averment on the factual position as to whether the respondents shall be eligible for the credit on the above mentioned items or not. His only submission is that the Commissioner (Appeals) should have examined these issues if, need be by calling for relevant details and decided the same one way or other.

7. The Tribunal may get the relevant details from both sides and decide or alternatively Tribunal may set aside the order of the Commissioner (Appeals) and direct the Commissioner (Appeals) to decide after taking necessary assistance from the original authority. Third alternative is to get the matter examined by the original authority on the grounds mentioned by the Commissioner (Appeals). If the matter is to be decided by the Commissioner (Appeals) or by the Tribunal, in the nature of dispute, it becomes necessary to involve the original authority and his staff from the department side for conducting necessary verification. Therefore, I deem it appropriate that the matter should go back to the original authority

for fresh consideration. As submitted by the learned SDR and as accepted by the learned Advocate for the respondents, the Commissioner (Appeals) does not have power of remand. Therefore, I set aside the order of the Commissioner (Appeals) in so far as the same related to the issues of disputed credit on the above mentioned items and remand the matter to the original authority for fresh consideration after granting a reasonable opportunity of hearing to the respondents.

8. The appeal is disposed of in the above terms.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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