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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1330/2011 - EX[DB], E/S/1711/11-EX
E/CO/191/11-EX

Date **16/02/2012**

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

To :
M/S SKS ISPAT & POWER LTD.,
PHASE-II, SILTARA INDUSTRIAL AREA, SILTARA
DISTT. RAIPUR CHHATISHGARH.

M/S SKS ISPAT & POWER LTD., Appellant

Vs

C.C.E. RAIPUR Respondent

STAY ORDER NO. 261/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/170/ 2012 EX[DB]** dated 14-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.
2. Adv. / Consult SH. B.L. NARSIMHAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
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 - 110005
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 (Haryana)
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
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Stay Application No.1711 of 2011
Excise CO No.191 of 2011
Excise Appeal No.1330 of 2011

Date of Hearing / Decision : 09.02.2012.

[Arising out of Order-In-Original No.Comm/RPR/10/2011, dated 31.01.2011 issued by CCE, Raipur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s SKS Ispat &Power Ltd. — Appellants
Versus
CCE, Raipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Present for the Appellants - Shri B.L.Narsimhan, Adv. & Shri Hemant Bajaj, Adv.
Present for Respondent - Ms. Renu J., DR

STAY Order No. 261/2012-EX(BR)
FINAL **Order No.** A/170/2012-EX(BR) **Dated :**__________

Per Ms. Archana Wadhwa:

After appreciating the submissions made by both the sides, we find that the appeal itself can be disposed of at this stage. Accordingly after dispensing with the condition of duties and penalties, we proceed to decide the appeal itself with the consent of both the sides.

2. The major part of the demand stands confirmed against the appellants by denying them the benefit of Modvat Credit of duty paid on the angles, channels etc. on the ground that the same stands used as supporting structures and in view of the declaration of law in the case of Vandana Global, such goods are not eligible Modvatable goods.

3. Ld. Advocate appearing for the appellants has no quarrel with the above proposition of law. However, he submits that the said a small portion of the steel items were used as structures + the majority of the same were used for fabrication of capital goods in their factory. Even the Larger Bench decision in the case of Vandana Global allows the Modvat Credit in respect of steel items used in the manufacture of capital goods.

4. He further draws our attention to a certificate issued by Chartered Engineer placed on record indicating quantum of steel items used for fabrication of capital goods. The said Chartered Engineer's certificate stands rejected by the Commissioner on flimsy ground.

5. We find that the Commissioner has not accepted the certificate of Chartered Engineer by observing as under :-

> *"8.1 I find that Noticee have submitted a certificate dtd. 30.11.10 issued by the Chartered Engineer Shri Y.K.Shrivastav, certifying the quantify of the impugned items used for various purposes. On perusal of the said certificate I find that the same to be vague and had merely been signed by the Engineer as is apparent in as much as :-*

(i) The certificate under reference has been issued on 11.03.10 in respect of the steel items used during the February, 2008 to March, 2009, which is much after the use of the impugned items. It is not possible even for an engineer to estimate the quantify of the steel items used, because the supporting structures are of varying length and at times the same had been placed very high above ground levels.

(ii) Further the certificate does not specify the exact quantity of each of the steel items consumed in particular equipment. A flat 15% scrap generation on each item has also been shown as manufactured. The certificate is therefore, apparently a fabricated one to suit the requirements of Noticee. In the same of an ongoing work it is not possible to quantify the use of the steel items used during a particular period of time.

(iii) Under the circumstances the authenticity and the genuineness of said certificate is doubtful and cannot be taken in to cognizance."

6. We find that the observations made by the adjudicating authority are factually incorrect in as much as the certificate of Chartered Engineer is dtd. 30.11.10. Perusal of the same shows that the period April, 2009 to December, 2009 is covered by the said certificate. As such the observations made by the adjudicating authority as regards date of issuance of certificate as also period are factually incorrect.

7. We further note that the second objection raised by the adjudicating authority is also not appropriate as we have seen the annexures of the said certificate giving full details about the raw

materials used, the quantum of capital goods manufactured by the appellants as also the quantum of structural's where such items were used. It seems that the annexures attached to the said certificate, escaped the attention of the adjudicating authority.

8. In as much as the entire issue revolves around the quantum of steel items used as either structural or capital goods, we find that the said certificate given by the Chartered Engineer is required to be re-examined by the Commissioner. For the said purpose, we set aside the impugned order and remand the matter to Commissioner for de-novo adjudication.

9. We also note at this stage that certain other small issues relatable to availability of credit in respect of welding electrodes used for repair & maintenance of plants & machinery or the availability of capital consumption notification to the angles, channels etc. being manufactured by the appellants are also involved. As we have already remanded the matter in respect of the major issue, we direct the Commissioner to re-decide the other issues involved. We make it clear that we are not expressing any opinion on the same.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

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