TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

STAY Application No. : E/Stay/1562/2012
Appeal No. : E/1243/2012-EX[DB]

Dated: **13/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Hyderabad Industries Ltd
A-49 A-56, Sida Satharia, Jaunpur, U.p.

Hyderabad Industries Ltd (Appellant)

VS

C.C. & C.E. & S.T.-Allahabad (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/673/2012-EX[DB] & S. O. NO. 916/2012** dated **05/06/2012** passed by the Tribunal under section

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL LINES,
ALLAHABAD,211001

2. Advocate(s) / Consultant(s):
S.P. OJHA
299, Baghambari Housing Scheme,
Allahpur, Allahabad, (UP)

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

<u>COURT NO. II</u>

<u>E/Stay/1562/2012 in &</u>
<u>Central Excise Appeal No. 12[illegible] of 2012</u>

[Arising out of Order-in-Appeal No. 18/CE/ALLD/2012 dated 23.2.2012 passed by the Commissioner (Appeals), Central Excise, Allahabad]

Date of Hearing/decision: 05th June, 2012

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?	

M/s. Hyderabad Industries Ltd., Appellant

Vs.

CCE, Allahabad Respondent

Present for the Appellant : Shri S.P. Ojha, Advocate
Present for the Respondent : Shri Nagesh Pathak, SDR

Coram: Hon'ble Shri Justice Ajit Bharihoke, President;
Hon'ble Shri Rakesh Kumar, Technical Member

STAY ORDER No. 916/2012-EX(BR)
<u>FINAL ORDER NO.</u> A/673/2012-EX(BR)

<u>Per Rakesh Kumar:</u>

The appellants are manufacturer of Asbestos Cement Sheets. The period of dispute in this case is from April, 2006 to December, 2007 during which period the appellant took Cenvat credit of Rs. 40,95,204/- in respect of TMT bars, Mill plates, Angles, Channeld, Plates, Chequered plates, Hot Strip Mill plates, HR sheets, JSTI joists, Sheet machine, TMT cable tray, and Stainless steel, Wire cloth etc. falling under Chapter 72 and 73 of the Central Excise Tariff Act, 1985, which according to the appellant had been used for fabrication of various items of capital goods namely, cement amd Flyash Storage equipment, Fibre handling equipment, pulp handling equipment, cone tank, pollution control equipment, mixing slurry preparation equipment, dry waste grinding machine, chimney for Diesel generating set, chimney for boiler (pollution control stack), storage tank for raw water, storage tank for soft water, moving crane supporting structure and girders, platform for mounting electrical panels, foundation plates and Reinforcement from equipment mentioning, auto trolley handling equipment etc. The department, however, was of the view that these items have been used for supporting structure for machinery and foundation and disallowed the credit. On this basis the Joint Commissioner vide Order-in-Original No. MP (Dem-33/2011) 202 of 2011 dated 11.10.2011 confirmed the Cenvat Credit demand of Rs. 40,95,204/- along with interest and imposed penalty of equal amount. On appeal, the Commissioner (Appeals) upheld the order-in-original vide his order-in-appeal No. 18/CE/ALLD/2012 dated 23.2.2012 against which this appeal along with stay application has been filed.

2. Heard both sides. After hearing this matter for sometime, we were of the view that the appeal itself can be finally disposed off. Accordingly, the requirement of pre-deposit is waived and with the consent of both sides, the matter is heard for final disposal.

3. Learned Counsel appearing for the appellant pleaded that the items in question have been used for manufacture of various items of capital goods; that in the Joint Commissioner in his order nowhere discussed the contention of the appellant in this regard and has disallowed the Cenvet credit on the basis of general observations that items, in question, have been used for manufacture of supporting structure. Therefore, he pleaded that the impugned order is not correct.

4. The learned D.R., however, supports the impugned order.

5. We have carefully considered the submissions of both sides and perused the record. On going through the order passed by the Joint Commissioner, we find that nowhere plea of the appellant regarding the use of the M.S. plates, Angles, Channels, TMT bars, H.R. sheets, TMT cable tray etc. in the manufacture of various items of capital goods has been discussed. In view of this, impugned order is set aside and the matter is remanded to the adjudicating authority for de novo adjudication after considering the plea of the appellant regarding the case of the disputed items in the manufacture of various items of capital goods and their parts, components

and accessories and giving opportunity of hearing to them. The stay application as well as appeal stands disposed as above.

(JUSTICE AJIT BHARIHOKE)
PRESIDENT

(RAKESH KUMAR)
TECHNICAL MEMBER

RK