IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 3232 of 2012 SM

[Arising out of Order-In-Appeal No. 132/BPL /2012 dated 16.7.2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

Trimula Industries Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Bhopal

Appearance:
Shri R Santhanam, Advocate for the Appellants
Shri R K Mishra, AR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 6.02.2017

ORDER NO . FO/ 50731 /2017-(SM)

Per Ms. Archana Wadhwa :

The appellant have been availing the cenvat credit in respect of CTD/TMD bars used by them in reinforced concrete structures which are meant for civil construction work like columns, beams attached to earth. On going through the impugned order, it is seen that lower authorities have relied upon the Larger Bench decision of the Tribunal in the case of ***Vandana Global Ltd. vs. CCE, Raipur [2010 (253) ELT 440 (Tri-LB)]*** laying down that after the amendment to provisions of law with effect from 7.7.2009, the credit would not be available for the period prior to that inasmuch as such amendment is not only prospective but would also prevail for the retrospective period.

2. It is seen that the said order of the Larger Bench in the case of Vandana Global Ltd. was considered by the Hon'ble Gujarat High Court in the case of ***Mundra Ports and Special Economic Zone Ltd. [2015 (04) LCX0197]*** and stands virtually over-ruled. Inasmuch as the Hon'ble High Court observed that the amendment issued on 7.7.2009 cannot be held to be clarificatory amendment and thus retrospective, the same would be applicable only prospectively. As such, without going into the factual aspect as to whether the iron and steel articles were used for construction or as supporting structurals, I am of the view that the same would be entitled to credit inasmuch as the period in the present appeal is before 7.7.2009.

3. The Tribunal has also taken note of the said decision of Gujarat High Court in the case of ***M/s. Petropole India Ltd. vs. CCE, Jaipur*** vide ***Final Order No. 51917/2016 dated 18.5.2016*** and has held in favour of the assessee. Inasmuch as the issue stand decided, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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