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Commissioner of Central Excise and Customs, Raipur (Cg) Vs. M/S. Prayash Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-15-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Excise Appeal No. 2013 of 2008-SM(BR)

Appellant : Commissioner of Central Excise and Customs, Raipur (Cg)

Respondent : M/S. Prayash Ltd.

Advocate for Pet/Ap. : Shri S.K. Bhaskar, DR for the Appellants. Shri Krishna Mohan, Advocate for the Respondent

Judgement :

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 45/RPR-I/2008 dated 30.4.2008.

2. Heard both sides.

3. The respondents is a manufacturer of MS ingots, runners and risers. The dispute relates to Cenvat credit taken by them on various items like MS angles, MS channels, MS plates, MS joists, welding electrodes etc. A show cause notice

was issued on 26.7.07 proposing denial of credit on the impugned items and the proposing penalty. The respondents failed to file any reply. None appeared before the original authority even though the original authority gave personal hearing on different dates namely, 15.10.07, 30.10.07, 14.11.07 and 11.12.07. The original authority has thus passed the impugned order ex-parte. Commissioner (Appeals), on appeal by the party, has set aside the impugned order.

4. Learned DR submits that the order of the Commissioner (Appeals) is erroneous and that the respondents are not eligible for the credit in the light of the decision of the Larger Bench in the case of Vandana Global Ltd. vs. CCE, Raipur reported as [2010 (253) ELT 440 (Tri-LB)].

5. Learned Advocate for the respondents submits that the respondent is a proprietary concern and non-filing of reply and not appearing before the original authority was not intentional. Their conduct should not be held against them. He supports the order of the Commissioner (Appeals).

6. I have carefully considered the submissions and perused the records. Prima facie, the submission of the learned DR that the credit may not be admissible on many of these items in the light of decision of the Larger Bench in the case of Vandana Global Ltd. cited supra, appears to be correct. However, this requires factual verification regarding the actual use of the material i.e. whether they are used for supporting structures or otherwise. Inasmuch as the original authority held against the respondents without the benefit of reply from the party, I deem it appropriate to set aside the orders of the original authority and remand the matter to the original authority to consider the matter afresh in the light of decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. cited supra and after giving reasonable opportunity of hearing to the respondents. The respondents shall file reply within 45 days from today before the original authority and co-operate in the adjudication proceedings.

7. The appeal is allowed by way of remand as above.