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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH**

O-20, Meghani Nagar, New Mental Hospital Compound Ahmedabad - 380 016.
(Tel. : 079-22683202)

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File No. E/1220, 1227, 1233 & 1249/2007 Dated 26-02-2007

From : THE ASSISTANT REGISTRAR, Cestat, Ahmedabad

To,
CCE
Surat - II

In the matter of : CCE Surat - II Appellant
VS.
M/s. Mangalam Rasayan P. Ltd. & Co. Respondent

I am directed to transmit herewith a certified copy of Order
No. E/419-422/WZB/Ah'bad/07 dated 09-02-2007
passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129 (B) of the Customs Act,
1962 and Finance Act, 1994.


Asst. Registrar

Copy to :

1. Respondent
 - ① M/s. Mangalam Rasayan (P) Ltd.
 - ② M/s. Mangalam Pharma Ltd.
 - ③ M/s. Wilson Polyester Ltd.
 - ④ M/s. Dhanlaxmi Mills
2. Advocate / Consultant
Sr. Viraj. Shah, Adv.
3. Chief Commissioner, C. Excise/Customs Vadodasa
4. Comm. C.Ex. / Custom (Appeals) Surat - II
5. Jt. C.D.R. CESTAT, Ahmedabad
6. Central Library, CESTAT, New Delhi
7. CESTAT Bar Association, New Delhi
8. CESTAT Bar Association, Mumbai / Ahmedabad
9. Master File
10. M/s. Lexsite Co. Limited *-the Company Law Institute Ltd.*
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12. M/s. Cen-cus Publications. *-Tax.in.India.com*
13. Deeparchie Publication.
14. M/s. Law Infotech Resources (P) Ltd. *-Taxman Publication Ltd.*
15. Shri R. Venkatraman, Consultant.
16. M/s. Excise & Customs Cases
17. Tax India Online Ltd.

(Address ^{are} in Back side.)


Asst. Registrar

① M/s. Mangalam Rasayan P Ltd.
187, Ind Phase,
GIDC, Vapi

② M/s. Mangalam Pharma Ltd.
C/o Mangalam Rasayan P Ltd.

③ M/s. Welson Polyester Ltd.
Plot No. 1204, 3rd Phase
GIDC, Vapi

④ M/s. Dhanlaxmi Mills
Plot No. 1204, 3rd Phase
GIDC, Vapi

**CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Zonal Bench, O-20, Meghani Nagar, Ahmedabad
COURT-II**

Excise appeal No. 1220, 1227, 1233, & 1249 of 2000

[Arising out of Order-in-Appeal No. SSS/SRT/2117-2134/99 dated 16.11.99 passed by Commissioner (Appeals), Customs & Central Excise, Surat]

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial),

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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.

Appellant

CCE, Surat-II

vs.

Respondents

M/s. Mangalam Rasayan P. Ltd.,
M/s. Mangalam Pharma Ltd.,
M/s. Welson Polyester Ltd.,
M/s. Dhanlaxmi Mills

Appearance:

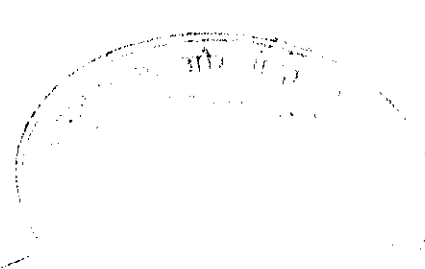
Shri Samir Chitkara, Authorised representative (DR) for the revenue.
Shri Viraj Shah, Advocate for the respondent. M/s. Dhanlaxmi Mills

Coram:

Mrs. Archana Wadhwa, Member (Judicial),

Date of hearing: 09.02.2007

(10) 



Order No. E/419-422/W2B/Au'bad/07

Per Archana Wadhwa:

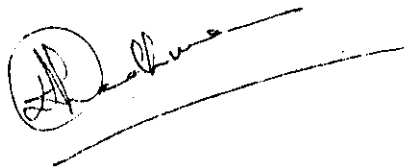
Being aggrieved with the order passed by the Commissioner (Appeals) Revenue has filed the present appeals.

2. After hearing both sides I find that the issue involved in the appeals against M/s. Mangalam Rasayan P. Ltd. and Mangalam Polysters Ltd. are on the issue as to whether chlorine ton^{er}s, which are storage container/cylinder are eligible Modvatable capital goods or not. The Commissioner (Appeals) in his order has upheld the order of the adjudicating authority, which allowed the Modvat credit on the said goods by observing as under:-

“..... At the time of use, a pipe is fitted to the toner thereby chlorine is supplied to Reactor for reaction. Reactor is plant/machinery as discussed by the Adj. Authority in his OIO. But, storage tank of an input viz. 'Chlorine tonner' neither fulfill the conditions to be a component, spare or accessory.

The board has clarified that the components, spares and accessories used in the, plant and machinery are admissible for modvat credit. Tonners are not part (or essential part) of the Reactor Machinery where reaction takes place. Reactor will function if chlorine is supplied to it whether through tonner or some other storage tank thing.

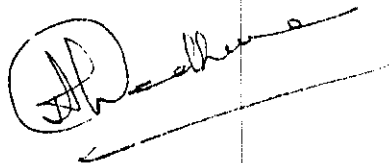
Furthermore, the period in which credit was availed was prior to 23.7.96 viz. when specific definition of Capital Goods was given prior




to this the definition of capital goods was the plant or machinery used in the production or processing or to bring about any change in any substance in the manufacture of final product and includes components spare and accessory used in the aforesaid plant and machinery in the instant case Chlorine tonner are neither directly nor indirectly used in the manufacture of final product. Manufacturing will take place even if chlorine is not stored in Chlorine Tonner. Hence, these are not essential, or even part of plant and machinery used in the manufacture of final product.”

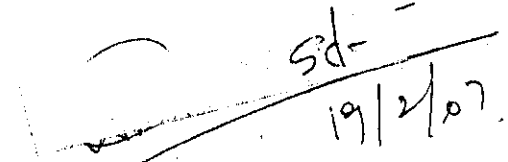
3. As against the above Revenue has not advanced logical evidence as to why Modvat credit should not be allowed on the said chlorine toner. In any case issue stand decided by a decision of the Larger Bench of the Tribunal in the case of Jawahar Mills as confirmed by the Hon'ble Supreme Court. As such I find no merit in the Revenue's appeals and reject the same. .

4. Other 2 appeals in the case of Velson Polyesters Ltd. and Dhanlaxmi Mills are in respect of Modvatibility on inputs like paper tube and antistatic oil in the manufacture of texturised yarn. The Revenue's contention is that since the yarn was taxable as per tariff value fixed by the Government, it cannot be said that cost of above packaging material was added in the assessable value of the final product, thus entitling the assessee to avail the credit. I find that identical issue was discussed by the Tribunal in Order Nol.C-




4/1092/WZB/2003 dated 18.11.2003 in the case of CCE, Surat vs. Dhanlaxmi Paper Mills, vide which the Revenue's appeal was rejected. Inasmuch as the issue stand decided I reject appeals filed by the Revenue in respect of the said respondents. In a nutshell all appeals filed by the Revenue are rejected.

(Pronounced on 21/2/07 )


19/2/07
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RK

आदेश को पूर्ण विवरण सह
Copy of the Order Forwarded and
अ. आ. आ. / कर्मिणा / अपीलक प्रतिनिधि
The Assessee/The Debit Assessee/The
DE. C.E.S. / A.T.
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अधीक्षक / अधिकारी
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आयकर / कर्मिणा / अपीलक प्रतिनिधि
Customs, Excise & Service Tax
Appellate Tribunal

28 FEB 2007