FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 08/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70340/2016-SM[BR] dated 31/05/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/54035/2014	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES,ALLAHABAD, UTTAR PRADESH 211001
		Name and Address of Respondent
2		TRIVENI ENGINEERING & INDUSTRIES LTD RAMKOLA, KUSHINAGR,, KUSHINAGAR ,UP

Copy To

3Advocate(s) / Consultant(s): SH R.KRISHNAN,ADV
297-E, POCKET-II
MAYuR VIHAR, PHASE-I
DELHI-91

4 Bar Association, CESTAT, Allahabad
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 Te ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.54035/14

Arising out of OIA No.20/CE/ALLD/2014 dated 31.01.2014 passed by Commissioner of Central Excise (Appeals) & S.Tax, Allahabad

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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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 His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

Commissioner of Central Excise & S. Tax, Allahabad ...APPELLANT(S)

VERSUS

M/s Triveni Engineering & Industries Ltd. RESPONDENT (S)

APPEARANCE

Shri V. K. Shastri, A.C. (A.R.) for the Department
Shri R. Krishnan, Adv. for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 28. 10. 2015

Final ORDER NO. 70340/2016

Per Mr. Anil Choudhary :

The Revenue is in Appeal against Order-in-Appeal No. 20/CE/ALLD/2014 dated 31.01.2014 passed by Commissioner of Central Excise (Appeals) & S.Tax, Allahabad, whereby the ld. Commissioner (Appeals) have allowed Cenvat credit on welding electrodes.

2. The brief facts are that in the course of scrutiny of the records by the revenue, it was found that during the period June 2006 to July 2008, the appellant had taken Cenvat credit on welding electrodes amounting to Rs. 8,04,415/- . It was also found that appellant had not taken credit on welding electrodes during the subsequent period August, 2008 to May, 2011. Accordingly, show cause notice dated 5/7/11 was issued proposing to demand and recover an amount of Rs.8,04,415/- under Rule 14 of CCR along with interest and further penalty was proposed under Rule 15. Vide order dated 24/9/12, the SCN was adjudicated and out of the proposed amount, an amount of Rs.5,13,338/- was disallowed after allowing abatement of the claim of credit of Rs.2,91,077/- already disallowed by OIO dated 23/9~~0~~/09. Being aggrieved, the respondent-assessee had preferred appeal before the Commissioner (Appeals), who vide the impugned order dated 31/1/2000 was pleased to allow the appeal setting aside the order denying them the credit of Rs.5,13,338/- observing as follows –

> "5. I have carefully gone through the facts of the cases, the impugned orders, grounds of appeals & various case laws

cited by the appellant. Stay applications have also been filed by the appellant along with the appeals. I proceed to decide the appeal without insisting any predeposit.

I have observed that while confirming the demand, adjudicating authority has held that there is no nexus between the welding electrodes and the specific capital goods which were manufactured using the welding electrodes and further used in the manufacture of their final products.

On the contrary, appellant has submitted that they have given all details of the Cenvat Credit availed on welding electrodes and their use after issue from the stores to the adjudicating authority i.e. details of issue slips, issue date and the plant where the electrodes were also used were mentioned clearly. It was stated that the electrodes were used in Boiler House, Mill House, Pan, Boiling House, Clarifier etc. at the time when the plant was under expansion.

I have gone through the records placed before me and observed that the welding electrodes have been used for fabrication of the sugar machinery part with the help of which, they manufacture their final product.

Thus the limited issue has to be decided that whether cenvat credit is available on welding electrodes used in manufacture, repair and maintenance of sugar machinery part.

On this issue, the law is settled that cenvat credit is admissible to the appellant. I have made reliance on the following case laws :

The Hon'ble Chattisgarh High Court in Ambuja Cement Eastern Ltd. Vs. Commissioner of Central Excise : 2010 (256) ELT 690 (Chattisgarh) has held that Cenvat credit was available on welding electrodes used for repair and maintenance of plant and machinery by holding that the term "inputs" covers all inputs except those specifically excluded in the definition, implied in the manufacturing process directly or indirectly. The Hon'ble Chattisgarh High Court in this case referred to the fact that the Apex Court has dismissed Civil Appeal filed by the Department in Birla Jute and Industries case : 2002 (139) ELT A93 (SC), the decision of the Tribunal that modvat credit was admissible on electrodes and welding equipments. The Hon'ble High Court also followed with respect the rulling of the Hon'ble Rajasthan High Court in Hindusthan Zinc Ltd. case (supra) and then came to the conclusion that welding electrodes used for repair and maintenance of plant and machinery would be legible as input for availing credit.

In the light of the above legal pronouncements on the issue, it can be concluded that the appellant is eligible to take credit on the welding electrodes, if they are used in manufacture or repair or maintenance of plant and machinery in a sugar factory.

Therefore, the grounds taken by adjudicating authority for confirming the demand are not sustainable in the eyes of law and if demand is not sustainable, penalty is also not warranted."

3. Being aggrieved the revenue is in appeal on the ground that the learned Commissioner ~~with~~ vide the order, o~~f~~n the fact that the respondent assessee has only given the details of the location where the goods were used, that is, in Boilerhouse, Millhouse etc. meaning thereby that welding electrodes used in particular places. Commissioner appeals have failed to mention the name of the part of the machinery for the fabrication of which, the welding electrodes were used. As it does not indicate that welding electrodes were used in manufacture of plant and machinery and it only mentions that the welding electrodes were used in Boiler house, Millhouse, pan, boiling house, clarifier, et cetera. Thus admittedly, welding electrodes were used as input in repair and maintenance of plant and machinery and repair being distinct from manufacture, Cenvat credit cannot be claimed on welding electrodes as inputs under Rule 2(k) of the CCR. Further, ld. Commissioner (Appeals) has overlooked ~~of~~ the fact that welding electrodes had also been used in fabrication of supporting structures of machines and supporting structures can in no way be categorised as capital goods. The ld. Commissioner (Appeals) has also not taken into account the ruling of Honourable Andhra Pradesh High Court in the case of Sree Rayalseema High Strength Hypo Ltd. Vs. Commissioner of Customs and Excise : 2012 (278) ELT 167 (AP), wherein it has been held that the second Explanation to the definition of "input" under Rule 2(k) of the Rules of 2004 puts it beyond doubt that unless the goods are used in the manufacture of capital goods which are thereafter used in the factory, they do not qualify as inputs and ~~stop~~ repair and maintenance being distinct from manufacture, Cenvat credit cannot be claimed

under Rule 2(k) of the rules of 2004 on the duty paid on welding electrodes used for repairs. Accordingly it is prayed for setting aside the impugned appellate order and restoring the order in original.

4. The ld. Counsel for respondent assessee opposes the appeal. He points out that in the show cause notice it is an admitted fact that welding electrodes have been used for welding of plant and machinery. Further points out that in the definition of Rule 2 (k) of CCR, 2004. it is provided that "input" includes goods used in manufacture of capital goods which are further used in the factory of the manufacture, but does not include items like cement, angles, TMT bars used for construction of shed, building or laying of foundation for making of structures. That only "inputs" are eligible for taking Cenvat credit which are used in the manufacture of capital goods which are further used in factory. He further reiterates that it was not disputed by the revenue with respect to use of the welding electrodes used for welding and maintenance of plant and machinery. He further points out that by the present appeal the revenue is attempting to travel beyond the scope of show cause notice which is not permissible. He further submits that the welding electrodes were used for fabrication of various parts of the machines in the Boilerhouse, Millhouse et cetera and the details have been furnished with the store ledges copies, vide para 2.6 of the reply to the show cause notice. He further points out that pan Boilerhouse and Millhouse etc. constitute the very important segment of the sugar machinery and the use indicated, to be in the Boilerhouse or Millhouse; that meets the requirement. It is

not necessary to pinpoint which part of ~~at~~ machinery was fabricated and repaired by use of the welding electrodes in question. The learned Counsel further relies on ruling of Honourable Karnataka High Court in the case of CCE Vs. Alfred Herbert India Ltd 2010 (257) ELT 29 wherein the question before the High Court was whether the Tribunal is correct in allowing the benefit of input credit in respect of goods which were used for repair and maintenance of plant and machinery when the said issue was already decided by the larger bench of the Tribunal and The Honourable Supreme Court as admissible. The revenue relied on a ruling in the case of SAIL Vs. Commissioner of Central Excise 2008 (222) E.L.T. 233 (Tri) which was delivered under the provisions of law which was in existence prior to amendment in the year 2000. The facts were that inputs were used for repair and maintenance of plant and machinery the Honourable High Court of Karnataka in Alfred Herbert India Ltd's case, in view of the amendment brought out in the year 2000 allowed the credit on such inputs observing that the situation changed pursuant to amendment brought into the year 2000. The learned Counsel for the respondent assessee further relies on the ruling in the case of Ambuja cement & Eastern Limited Vs CCE 2010 (256) ELT 690 (Chhattisgarh) of the Honourable Chhattisgarh High Court, in which the question was whether welding electrodes used for repair and maintenance of plant and machinery can be considered as "input" as defined under rule 2 (k) of CCR 2002. The Honourable High Court following the ruling of Honourable Rajasthan High Court in the case of Union of India versus Hindustan zinc Ltd, which was affirmed by the Honourable Supreme Court in UOI Vs Hindustan Zinc Ltd. : 2007

(214) ELT A115 (SC) wherein it was held that such goods which are used for repair and maintenance of plant machinery, are part of the manufacturing ~~and~~ process and are eligible to avail modvat credit. Following this ruling and Honourable High Court of Karnataka decided the issue in favour of the appellants in Ambuja cement & Eastern Limited ~~is~~ case (supra). Accordingly, the learned Counsel for respondent prays for dismissal of the revenue's appeal.

5. Having considered the rival contentions I find that the issue is no longer res-integra and the same is settled by the rulings of Honourable High Court of Karnataka in the case of Ambuja cement Eastern Limited (supra) which has considered all the relevant judgments. Accordingly, I hold that welding electrodes used by the appellant in repair and maintenance and fabrication of machinery parts are ~~in~~eligible "inputs". Accordingly the impugned order is upheld and the revenue's appeal is dismissed.

(Dictated and pronounced in the open Court)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

प्रमाणित प्रति / Certified True Copy
14.7
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

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