

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

Appeal No. E/464/2008 &E/S/441/2008

Date 16/04/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S THE OUDH SUGAR MILLS LTD.
HARGAON, SITAPUR (U.P.)
M/S THE OUDH SUGAR MILLS LTD.

Appellant

Vs

C.C.E. LUCKNOW

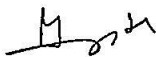
STAY ORDER NO. 347/08-EX.

Respondent

I am directed to transmit herewith a certified copy of Final order No. 158/08

Excise dated 10-4-08

assessed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR. RAJESH CHHIBBER

FA/9, NEW KAVI NAGAR, GHAZIABAD

3. S.D.R.

~~ICEDR~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indrapuram - 201010, Ghaziabad, DT, U.P.

10. Nidheshak publications, I.P. Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No. 70 (Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt. Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – II

**E/STAY No. 441/2008-DB in
EXCISE APPEAL No. 441 OF 2008**

[Arising out of Order-in-Appeal No. 176-CE/LKO/07 dated 19.11.2007
passed by the Commissioner (Appeals), Central Excise, Lucknow]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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 would 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. The Oudh Sugar Mills Ltd.

Appellants

Vs.

CCE, Allahabad

Respondent

Appearance:

Shri Rajesh Chibber, Advocate for the appellants,
Shri Deepak Garg, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
 Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 10th April, 2008

FINAL ORDER NO. 158/08-Ex dated _____
 STAY ORDER NO 347/08-Ex-

Per S.S. Kang:

· Heard both sides.

2. Applicants filed this application for waiver of pre-deposit of duty. Demand was confirmed after denying credit in respect of welding electrodes. We find this issue is now settled by the decisions two Larger Bench of the Tribunal and the decision of the Hon'ble Rajasthan High Court in the case of CCE vs. Hindustan Zinc Ltd. Therefore, appeal itself is being taken up for hearing.

3. In the impugned order credit in respect of welding electrodes is denied to the appellants. This issue is now settled by the decision of the Larger Bench of the Tribunal in the following decisions:-

i) 2005 (186) ELT 158 – Triveni Engg. & Inds. Ltd. Vs. CCE, Meerut;

ii) 2003 (159) ELT 553 (Tri.-LB) – Jaypee Rewa Plant vs. CCE, Raipur.

The Tribunal held that the manufacturer is not entitled for credit in respect of welding electrodes as capital goods or inputs. Further, we find

that the Hon'ble Rajasthan High Court in the case of UOI vs. Hindustan Zinc Ltd. Vide order dated 8th August, 2002 has disallowed credit in respect of welding electrodes. In view of this stay application as well as appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 10th April, 2008

RK