

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

Appeal No. E/3701/2005-3706/2005

Date 07/01/2008

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

To :

**(-6) M/S DIAMOND CEMENTS
BIRLAPUR P.O NARSINGARH DISTT- DAMOH (M.P.)**

M/S DIAMOND CEMENTS

Appellant

C.C.E BHOPAL

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.7-12/2008-SM[BR] dated 19.10.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

178, BHAGYA BHAWAN, ZONE-II, M.P.NAGAR,
BHOPAL

2. Adv. / Consult

MR.V.LAKSHMI KUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases. B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

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

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeals Nos.3701-06 of 2005-SM (BR)

[Arising out of order in appeal No.28-33-CE/BPL/2005 dated 10.9.2005
passed by the Commissioner (Appeals) Central Excise, Bhopal]

Date of Hearing/ Decision: 19.10.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

-
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 Their Lordships wish to see the fair copy of the Order? :
 4. Whether Order is to be circulated to the Departmental authorities? :
-

M/s. Diamond Cements

Appellants

[Rep. by Mr. Ravi Raghvan, Advocate]

Vs.

CCE, Bhopal

Respondent

[Rep. by Mr. Rajmal, Authorized Representative (DR)]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final ORDER No 7-12/08-SM (BR)

Per: P.K. Das

Common issue is involved in these appeals and, therefore, all are taken up together for disposal.

2. The appellants are engaged in the manufacture of cement. In the instant appeals, Cenvat credit is denied on the various inputs and capital goods.

3. After hearing both the sides and on perusal of the records, the admissibility of credit on the inputs and capital goods are discussed herein below:-

(i) **Welding Electrodes, Oxygen gas, D.A. Gas, Acetylene Gas, Nitrogen gas:**

I find that the Tribunal in the appellant's own case vide Final Order No.376-379/07-SM (BR) dated 19.2.2007 upheld the denial of credit in respect in the said items. The relevant portion of the said order is reproduced below:-

"2. I find that the issue of Welding Electrodes is settled by the Two Larger Benches of the Tribunal in the case of Triveni Engg. [2005 (186) ELT 158] and Jaypee Rewa Plant Vs. CCE, Raipur [2003 (159) ELT 553]. The Tribunal held that the manufacturer are not entitled for credit in respect of welding electrodes as inputs or capital goods. The same is position regarding the calibrate gas for maintenance of the machines. Therefore, the impugned order whereby credit has been denied in respect of welding electrodes and gas, is upheld."

In view of the above findings of the Tribunal, denial of credit on these items is upheld.

(ii) **Tyres used in Excavator and dumpers:**

It has been observed by the lower authorities that the tyres were used in vehicles i.e. Excavators and dumpers, which were used in their lime stone mines located outside of the factory premises. I find that the Tribunal in their own case vide Final Order dated 19.2.2007 held that the appellant is entitled for credit in respect of capital goods or inputs used in the mines. The relevant portion of the said decision is reproduced below:-

"3. Regarding parts of pollution control equipment, parts are not covered under the definition of capital goods. The definition of capital goods during the relevant period includes machines, machinery plant, etc. the appellants are manufacturing cement and cement plant is incomplete without pollution control equipment. The definition of capital goods further provides that parts of the specified machines and plant are covered under the description of capital goods. As Pollution Control Equipment is covered under the definition of capital goods, therefore, parts of equipment are also entitled for credit as capital goods. In respect of parts of material handling equipment, as the material handling equipment is covered under the capital

goods and now the Hon'ble Supreme Court in the case of Vikram Cement Vs. CCE, Indore reported in 2006 (197) ELT 145 has held that manufacturer is entitled for credit in respect of capital goods or inputs used in the mines."

In view of the decision of the Tribunal in the Final Order dated 19.2.2007, denial of credit on tyres used in Excavators and dumpers, is set aside.

(iii) **Sodium Silicate:**

The Commissioner (Appeals) observed that sodium silicate is being used in cement Kiln and these chemicals are being used for maintenance work.

Ld. Advocate submits that Sodium silicate is an in-organic chemicals and is used in cement mill kiln for fire brick lining. The Kiln is essential capital good used in the manufacture of cement and Sodium Silicate is used for proper running, repair and maintenance of the Kiln.

I find that the Tribunal in the case of Commissioner of Central Excise, Vs. Punjab Corporation Steels Ltd. - 2003 (159) ELT 179 (T-D) held that the Sodium Silicate are eligible inputs. It is seen in the present case, the Sodium Silicate is used in the cement kiln in the manufacture of final products. So, the denial of credit on Sodium Silicate, is set aside.

(iv) **Transformer Oil:**

11. The Commissioner (Appeals) observed that transformer oil is not used as a lubricant but for the purpose of cooling and insulation in transformer.

Ld. Advocate submits that transformer oil is used for running numerous machineries without which it is not possible to manufacture cement.

It is seen that the Tribunal in the case of H.E.G. Vs.

Commissioner of Central Excise, Indore - 2001 (127) ELT 235 (T-D)

held that transformer oil being cooling material is eligible for Modvat credit. Accordingly, the denial of credit on transformer oil is set aside.

(v) **Carbon Monoxide**

It is contended by the Id. Advocate that Carbon-monoxide is used for CO Gas analysers installed at various locations on the Pyro processing section and in electrostatic precipitation for coal. It is seen that Carbon-monoxide is used to prevent the pollution and used in the pollution control equipment. The Tribunal in the appellant's own case vide Final Order dated 19.2.2007 held that the appellants are manufacturing cement and cement plant is incomplete without pollution control equipment. The Pollution Control Equipment is covered under the definition of capital goods. Therefore, the denial of credit on Carbon Monoxide is set aside.

(vi) **Adhesives**

The Commissioner (Appeals) observed that Adhesives are used for joining the ends of the damaged and broken conveyor belts, which is also a maintenance operation. It is contended by the appellant that adhesives is used for joining the belts used for carrying the inputs and finished goods and eligible for Cenvat. It is also contended that the belts are handling equipments, which are eligible to Cenvat credit.

I find that Adhesives are used in the conveyor belts which were used for transferring the materials. The Hon'ble Supreme Court in the case of Birla Corporation Ltd. Vs. Commissioner of Central Excise - 2005 (186) ELT 266 (SC) held that Spares of ropeway used for transporting crushed limestone from mines to factory, entitled to

modvat credit. In this case, Conveyor belts is eligible for Modvat credit and the Adhesives in question were used for the said conveyor belts and, therefore, it is eligible for credit. Accordingly, the denial of credit on Adhesives is set aside.

4. In view of the above, Appeal No.E/3701 of 2005 and E/3702/05 are rejected. Appeal No.E/3703 of 2005 to 3706/06 are partly allowed.

Order dictated & pronounced in open Court on 19.10.2007.

(P.K. Das)
Member (Judicial)

Ckp.