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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/1191-1192/2005-SM[BR] Date 09/01/2008

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

To :
J.K.INDUSTRIES LTD.
JAYKAYGRAM KANKROLI
DISTT .RAJSAMAND [RAJ.]

J.K.INDUSTRIES LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of Final order No.16-17/2008-SM[BR] dated 12.12.2007 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. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
2. Adv. / Consult SHRI. R. RAVI RAGHVAN ADV.
B-6/10 SAFDARJUNG ENCLVE NEW DELHI-29

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 Publictions (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, PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 1191-1192 of 2005-SM

[Arising out of Order-in-Appeal No. 2 & 3(RM)CE/JPR-II/2005 dated 11.1.2005 both passed by Commissioner of Central Excise (Appeals), Jaipur II]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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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?	:	No
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?	:	

J.K. Industries Ltd. — Appellants

Vs.

Commissioner of Central Excise. — Respondent
Jaipur II

Appearance:

Shri R.Ravindran, Advocate for the Appellant
Shri B.S. Suhag, DR for the Respondent

Date of decision : 12.12.2007

Final ORDER NO. 16-17/08-SM(BR)

Per S.S. Kang:

Common issues are involved in all these appeals. Therefore, are being taken up together. The appellant filed these appeals against the impugned order whereby the benefit of credit is denied in respect of furnace oil and chemicals used in generation of steam which is being used in two different units of the appellants. Revenue wants to deny the credit in respect of inputs used in generation of steam which is supplied to other units. The contention of the appellant is that both the units are situated in the same premises and they have common boiler for generation of steam. Therefore, the credit cannot be denied in respect of the inputs used in generation of steam.

2. The contention of the Revenue is that as the inputs are used in the steam which was used not within the factory of production but was cleared to other unit which was separately registered with the Central Excise department, therefore, the appellants are not entitled for credit in respect of inputs used in generation of steam which was supplied outside the factory.

3. The appellant relied upon the decision of Diamond Cements vs. CCE, Bhopal, reported in 2004 (169) ELT 34.

4. I find that the demand raised on the same ground in the Diamond Cement vs. CCE (supra) was set aside by the Tribunal. The Tribunal held that

> "5. We have considered the submissions of both the sides. We find force in the submissions of the learned Advocate for the appellants that mere taking of two registration certificates separately for

Diamond-I and Diamond-II, these cannot be regarded as two different factories. As per Section 2(e) of the Central Excise Act "factory", means any premises, including the precincts thereof, wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on. It has been the contention of the appellants that both the units are situated in close proximity and adjacent to each other in the same premises. This has not been controverted by the Revenue that both the units are not located in the same premises. The similar issue came for consideration of the Tribunal in the case of Dhampur Sugar Mills Ltd. (supra) wherein this Tribunal observed that "number of registrations, in our view, would not decide the number of factories unless and until they are situated in different premises. It is very clear from the definition of the term "factory", that all the three units will be regarded as one factory as all the excisable goods are manufactured in the same premises." Similar views were expressed by the appellate Tribunal in the case of J.K. Synthetics Ltd. [1991 (52) ELT 116(Tri)] wherein it was held that as two units fall within the same premises within one boundary wall, the entire area of the land allotted to the appellants in the industrial area, the appellants are entitled to obtain one consolidated license for the manufacture of their goods within their factory complexes as the object behind the grant of consolidated license is that any person manufacturing different excisable goods within one factory area is entitled to obtain one license instead of different licences for different commodities. Similar issue came also for consideration in the case of Rollatainers Ltd. (supra) where the appellant company were having number of units engaged in the manufacture of excisable goods in the same premises. The Tribunal has held that as paperboard division and paper division are situated in the same premises, this cannot be treated as different factories. The decision, relied upon by the Commissioner (Appeals), i.e. Associated Cement Co. Ltd. has been passed by the learned Single Member of the Tribunal which is not binding on us. Further, as pointed out by the learned Advocate, the decision in the case of Dhampur Sugar Mills Ltd., was not considered though referred to by the learned Single Member in A.C.C. case (supra). We, therefore, hold that the benefit of Cenvat credit in respect of the impugned inputs cannot be denied to the appellants on the ground that the part of the electricity is supplied to Diamond II."

5. In the present case also, both the units are situated in the same premises of appellant. Therefore, in view of the above decision of the Tribunal, the impugned order is set aside. Appeals are allowed.

(Dictated in the open Court)

(S.S. Kang)
Vice President

Dt: 12.12.07
ss