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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/171 /2006-SM[BR] Date 10/01/2008

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

To :
M/S U.G.SUGAR & INDUSTRIES LTD.
SEOHARA,DISTT.BIJNOR,(UP)

M/S U.G.SUGAR & INDUSTRIES LTD. Appellant
Vs
CCE,MEERUT-II Respondent

I am directed to transmit herewith a certified copy of Final order No. 43/2008-SM[BR] dated 26.11.2007 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   CCE,MEERUT-II
   THE COMMISSIONER-II CCE,MEERUT
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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.III.

Appeal No.E/171 of 2006-SM (BR)

(Arising out of the Order-in-appeal No.243-CE/MRT-II/2005 dated 19.10.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut) .

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?	:

Yes

M/s. U.G. Sugar & Industries Ltd. Appellant.

Versus

CCE, Meerut-II Respondents

Appearance

Shri Bipin Garg, Advocate for the appellants.
Shri S. Gautam, Authorised Departmental Representative (DR) for the respondent.

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

Date of decision:26.11.2007.

Final Order No.........43/08-SM(BR)/....../Dated:. 26/11/07

Per P.K. Das:

The appellant filed this appeal against denial of Cenvat credit on capital goods viz. Welding Electrodes, shaft, Asbestos packing/CAF Jointing Sheet, Plates/Shafts/Sections of Iron and Steel etc. After hearing both the sides and on perusal of the records, the admissibility of the credit on these items as capital goods are discussed herein below:-

(i) Welding Electrodes:-

(a) Welding Electrodes were used for the purpose of repair and maintenance of machineries. The Tribunal in the case of the L.H. Sugar Factory Ltd. Vs. CCE vide Final Order No.1354-1360 of 2007-SM (BR) dated 5.7.2007 upheld the denial of credit on Welding Electrodes. The relevant portion of the said order is reproduced below:-

"2. The contention of the Revenue is that the issue is in respect of welding electrodes is decided by the Tribunal in favour of the Revenue. I find merit in the contention of the Revenue in this regard. The Tribunal in the case of Triveni Engg. & Industries Ltd. Vs. CCE reported in 2005 (186) ELT 158 and in the case of Jaypee Rewa Plant Vs. CCE reported in 2003 (159) ELT 553 held that manufacturer is not entitled for the credit in respect of welding electrodes as inputs or capital goods. In view of this, the demand of duty denying the credit in respect of welding electrodes is upheld."

In view of the above, denial of credit on welding electrodes is upheld.

(ii) Shaft

It is seen that the shaft is the part of the main rollers, which is classifiable under Chapter 84 within the definition of the capital goods. It is further seen that the shaft is the component or the parts of the machine and, therefore, it is entitled for Cenvat Credit as capital goods. Accordingly, denial of credit on shaft is set aside.

(iii) Asbestos Packing/CAF Jointing Sheet:-

The Commissioner (Appeals) observed that it is basically a material used only for making pipes to make leak proof. The Tribunal in the case of KCP Sugar & Indus. Ltd. reported in 2004 (178) ELT 275 (T-LB) held that Asbestos packing/compressed asbestos fibres used for preventing leakage in pipes connected with flanges to transfer canejuice from one station to another in processing plant in sugar mils- goods are to be considered as integral parts of sugar machinery and are entitled for Cenvat credit as capital goods. Hence, the denial of credit on these items are set aside.

(iv) Plates/Sheets/Sections/Shafts-Iron–The Commissioner observed that these items are known to be construction /fabrication material in common parlance and in no way the nature of these items can be said to fall within the meaning of components, accessories or spares of capital goods.

- Ld. Advocate relied upon the decision of the Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. Reported in 2007 (214) ELT 510 (Raj.), wherein it has been held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product. Such goods which are necessary for running of plant and upkeeping of machinery directly involved in the manufacturing of products, held to be eligible to avail Cenvat Credit. On enquiry from the Bench, the ld. Advocate placed the copies of the written submissions before the Dy. Commissioner of Central Excise regarding the use of these items. It is seen that these items were used in the sugar factory for making ~~shafts~~ sheds to avoid exposure of machines to rain, sun and weather for their efficient working. These items are also capital goods for supporting structures. In any event, it is seen that the appellants stated that these items were used for making structure of the factory. Therefore, the use of these items are not covered by the decision of the Hon'ble High Court of Rajasthan in the case of Hindustan Zinc Ltd. I find that the Hon'ble Rajasthan High Court allowed the credit on these items used in workshop for repair and maintenance of the machinery. Therefore, these items cannot be treated as capital goods. Accordingly, denial of credit on these items is upheld.

In view of the above, credit on Asbestos and Shaft is allowed and denial of credit on welding electrodes/S.S. plates is upheld. I find that the issue involved in this case is the admissibility of Cenvat credit on various goods and interpretation of statutes, therefore, the imposition of penalty is set aside.

Order dictated & pronounced in open court on 26.11.2007.

(P.K. Das)
Member (Judicial)

Ckp.