

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/2868/2005-SM[BR]

Date 14/01/2008

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

To :
HEG LTD (SPONGE IRON DIVISION)
BORAI INDL. GROWTH CENTRE, P.O. RASMADA,
DISTT. DURG (C.G.)

HEG LTD (SPONGE IRON DIVISION)

Appellant

Vs

Respondent

C.C.E RAIPUR

I am directed to transmit herewith a certified copy of Final order No. 68/2008-SM[BR] dated 8.1.2008
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 RAIPUR
C.EX BUILDING, DHAMTARI ROAD, TIKARAPARA,
RAIPUR (C.G.)
2. Adv. / Consult SHRI. RAVI RAGHAVAN ADV.
B-6/10. SAFDARJUNG ENCLAVE 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 Publications (P) Ltd., 1512-E, Bhisim 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 & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

PRINCIPAL BENCH, NEW DELHI

Excise appeal No. 2868 of 2005

[Arising out of Order-in-Appeal No. 32/RPR-II/2005 dated 25.5.2005
passed by the Commissioner (Appeals-II), Customs & Central
Excise, Raipur]

For approval and signature:

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

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. H.E.G. Ltd.

Appellants

Vs.

CCE, Raipur

Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants,
Ms. Archana P. Tiwari, Jt.CDR for the Revenue.

Coram:

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

Date of Hearing: 8.1.2008

FINAL ORDER NO. 68/08-SM (related)

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby the credit in respect of M.S. plates, Steel plates, and angles was denied on the ground that the same are used for fabrication of certain components of the plant and machinery which is immovable property. The case of the Revenue is also that the items in question per se neither components nor spares or accessories of the ^{capital} goods.

3. The contention of the appellant is that the goods in question are used in fabrication of the parts and components of the plant. The appellants are engaged in the manufacture of sponge iron and plant requires regular maintenance and to keep the plant in working condition, ^{the} worn out parts are replaced. The appellants relies upon the decision of the Rajasthan High Court in the case of UOI vs. Hindustan Zinc Ltd., reported in 2007 (214) ELT 510 (Raj.). The contention is that, ^{in this case} the benefit of credit ~~was~~ ^{was allowed} availed on MS/SS plates used for maintenance of plant. ^{was allowed} The appeal filed by the Revenue against this decision of the Rajasthan High Court was dismissed by the Hon'ble Supreme Court, reported at 2007 (214) ELT A 5.

4. In the present case in reply to the show cause notice the appellants specifically stated that the items in question are used in maintenance of plant and machinery for replacement of worn out parts. Hon'ble Rajasthan High Court in the case of UOI vs. Hindustan Zinc Ltd. has held as under:-

“3. This Court concluded that goods once brought in factory for use in up-keep and maintenance of plant and machinery, which are directly used in manufacture of excisable articles, are the capital goods, and were certainly of subordinate necessity to such plant and machinery for the running of plant and is otherwise essential for its smooth and regular operations. Without proper up-keep and maintenance, the principal plant and machinery cannot function properly. Use of such capital goods is essential for smooth running of plant with greater efficiency. In other words, the goods in question are essential supplement to the plant and machinery for use in manufacturing goods, for its greater efficiency and better result and thus, it is an integral part of the process with which the primary machines are engaged. Looked from these aspects, there is no impediment for the goods in question qualifying as capital goods eligible for Modvat credit.

4. Consequently, such goods which are necessary for running of plant and up-keeping of the machinery directly involved in the

manufacturing and products were held to be eligible to avail Modvat credit.”

The appeal filed against the said decision is also dismissed by the Hon’ble Supreme Court. In view of the above decision, impugned order is set aside and the appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 8th January, 2008

RK