

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/3840/2005-SM[BR]

Date 16/01/2008

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

To :
M/S THE DHAMPUR SUGAR MILL LTD
DHAMPUR (N.R.) DISTT- BIJNOR (U.P.)
246761


M/S THE DHAMPUR SUGAR MILL LTD

Appellant

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-II

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.102/2008-SM[BR] dated 2.11.2007
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-II
MANGAL PANDEY NAGAR, MEERUT-II

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 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 Appeal No.3840 of 2005-SM (BR)

[Arising out of order in appeal No.230-CE/MRT-II/2005 dated 27.9.2005 passed by the Commissioner (Appeals) Central Excise, Meerut-II]

Date of Hearing/ Decision: 2.11.2007

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. The Dhampur Sugar Mills

Appellants
[Rep. by Mr. Bipin Garg, Advocate]

Vs.

CCE, Meerut-II

Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

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

Final ORDER No 102/08/SM(BR)

The appellant filed this appeal against denial of Cenvat Credit on Welding Electrodes and Winding Wires.

2. Ld. Advocate on behalf of the appellant submits that the Rajasthan High Court in the case of Shree Cement Ltd. allowed Cenvat Credit on Welding Electrodes. On denial ^{of} credit on Winding Wires, he submits that the credit was denied on the ground that the appellant initially claimed it as inputs and subsequently, it was changed as capital goods. He submits that the Commissioner (Appeals) proceeded on the basis of Larger Bench decision in the case of CCE VS. Surya Roshini Ltd. – 2001 (128) ELT 293 (T-L). He further submits that the Larger Bench of the Tribunal in the case of Commissioner of Central Excise Vs. Modi Rubber Ltd. – 2000 (119) ELT 197 (T-LB) held that declaration filed by the assessee in terms of Rule 57Q of the erstwhile Central Excise Rules 1944 is sufficient for the purpose of Modvat credit under Rule 57A. He also submits that during the relevant period, in this case, there is no provision of filing declaration and, therefore, the Larger Bench decision relied upon by the ld. Commissioner (Appeals) is not applicable.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He relied upon the decision of Larger Bench of the Tribunal in the case of Jaypee Rewa Cement reported in 2003 (159) ELT 553 (T-LB) on denial

credit on Welding Electrodes. He submits that the Tribunal in the case of J.K. Cement reported in 2007 (211) ELT 235 (T-D) denied the credit on Welding Electrodes considering the decision of the Hon'ble High Court of Rajasthan. He further submits that the appellant claimed Winding Wires as input and, therefore, they cannot change it as capital goods, as held by the Larger Bench of the Tribunal in the case of M/s. Surya Roshini Ltd. (supra).

4. After hearing both the sides and on perusal of the records, I agree with the submissions of the ld. DR in respect of denial of credit on Welding Electrodes. It is seen that the Tribunal in the case of J.K. Cement (supra) after discussing the decision of the Hon'ble High Court of Rajasthan, held that Welding Electrode is not entitled for Cenvat credit. Accordingly, the denial of credit on Welding Electrode is upheld.

5. Regarding denial of credit on Winding Wire, the Commissioner (Appeals) held that credit on Winding Wire is admissible as capital goods but the appellant filed Modvat declaration as input and later, they claimed as capital goods. He observed that change of declaration from input to capital goods is not permissible in terms of the decision of the Larger Bench of the Tribunal in the case of Surya Roshini Ltd. (supra). I find that the issue before the Larger Bench in the case of Surya Roshini Ltd. (supra) was to decide the conflicting decision between the Benches in the cases of Union

Carbide reported in 1996 (86) ELT 613 and Jawahar Mills Ltd. Vs. CCE reported in 1999 (108) ELT 47. It was held that the Notification No.207/86-CE dated 2.4.86 is not related to input. It has been observed that those goods, which have been declared as inputs cannot be allowed Modvat Credit as capital goods. But in the case of Modi Rubber Ltd, (supra), the Larger Bench of the Tribunal decided the question whether Modvat credit on Lubricants as input under Rule 57A is liable to be allowed. The relevant para of the said decision is reproduced below:-

21. In Appeal No.E/1814/97-NB, we find that the question whether modvat credit on lubricants as inputs under Rule 57A is liable to be allowed where the goods are declared as capital goods under Rule 57Q instead of as inputs under Rule 57A is also involved. We note that a similar question was considered by a Two-Member Bench of this Tribunal in the case of Devyani Beverages Ltd. Vs. CCE, Meerut [1999(33) RLT 73] wherein the Bench held that the declaration filed by the assessee in terms of Rule 57Q was sufficient for the purpose of extending credit on glass bottles which were inputs within the meaning of Rule 57A. We also hold similar view in the instant case and sustain the appellant's challenge against the impugned order of the Commissioner (Appeals) denying Modvat credit on the

ground that the declaration was not in terms of Rule 57A.
The appeal is, therefore, allowed.”

6. On perusal of both Larger Bench decisions, it is seen that in the case of Modi Rubber Ltd. (supra), the Larger Bench held that declaration filed by the assessee in terms of Rule 57Q of Central Excise Rules, 1944 is sufficient for the purpose of extending credit on inputs under Rule 57A. Respectfully following the decision of the Larger Bench in the case of Modi Rubber Ltd., the credit denied on Winding Wire is set aside.

7. It is seen that the denial on credit on Welding Electrode was settled by the Larger Bench of the Tribunal and, therefore, the imposition of penalty is not justified. Accordingly, the penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 2.11.2007.

(P.K. Das)
Member (Judicial)

Ckp.