

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/172 /2006

Date 23/01/2008

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.

CCE, MEERUT-II

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.118/2008-SM[BR] dated 5.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE, MEERUT-II
DO
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 & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. III

Excise Appeal No. 172 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 244/CE/MRT-II/2005 dated 19/10/2005 passed by The Commissioner (Appeals) – II, 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 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 Department Authorities? :
- Y.L.)

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

Appellant

Versus

CCE, Meerut – II

Respondent

Appearance

Shri Atul Gupta, C.S. – for the appellant.

Shri S.L. Meena, Authorized Representative (SDR) – for the Respondent.

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

DATE OF HEARING : 05/12/2007.

Final Order No. 118 | 08-SM(BR)
Dated : 5/12/07

Per. P.K. Das :-

The appellant filed this appeal against denial of Cenvat credit on various items namely CAF Jointing Sheets, D.E. white metal, Articles of Iron & Steel, Angles/Channels/ Shapes and Section, Welding Electrodes and Winding Wires. The appellants are engaged in the manufacture of V.P. Sugar with Molasses classified under heading No. 17.01 and 17.03 of the Schedule of the Central Excise Tariff Act 1985.

2. After hearing both the sides and on perusal of the records, the issue of admissibility to the credit on the above items are discussed below :-

- (a) CAF Jointing Sheets :- The Commissioner (Appeals) observed that these items are primarily used for packing of Steam line etc. for prevention of leakage. It is seen that the Tribunal in the case

of Dwarikesh Sugar Industries Ltd. vs. CCE, Meerut – II vide final order No. 1264-1270/07 – SM (BR) dated 16/08/07 allowed credit on these items. Hence, the denial of credit on these items is set aside.

- (b) D.E. White Metal :- The appellant claimed that these items have been used as smooth liner at turbine and steam engine. Both the authorities below denied the credit on the ground that heading No. 8010 has not been included in the definition of capital goods. It is well settled that the components, accessories, spares of plant/machinery are eligible for Cenvat credit irrespective of the fact of heading. Hence, it is required to be examined by the adjudicating authority, the use of the said item as component, accessory, spare of plant and machinery.
- (c) Article of Iron & Steel and Angles/Channels/Shape and Section :- The Commissioner (Appeals) observed that Angles/Channels/Shapes and Sections were used in fabricating shapes to avoid

exposure of machines to rain, sun, at their factory. The appellant submits that these items were used for fabrication of capital goods. The learned advocate submits that the Hon'ble Rajasthan High Court in the case of **Union of India vs. Hindustan Zinc Ltd.** reported in **2007 (214) E.L.T. 510 (Raj.)** held that M.S./S.S. plates used in workshop meant for repair and maintenance of machinery are eligible for Cenvat credit. The learned DR submits that the Tribunal in the case of **M/s D.S.M. Sugar Mills Ltd. vs. CCE, Kanpur** reported in **2001 (135) E.L.T. 654 (Tri. – Del.)** held that these items used in Civil construction are not eligible for Cenvat credit. In view of that, these items used in fabricating shades are not eligible for Cenvat credit. In view of that, these items used in fabricating shades are not eligible for Cenvat credit. Besides, the items used for fabrications, for repair and maintenance of machinery are eligible for credit. Hence, the matter is required to be examined by the adjudicating authority.

- (d) **Welding Electrodes :-** The learned counsel on behalf of the appellant submits that the Hon'ble Rajasthan High Court in the case of **India vs. Neel Shree Cement** rejected the reference application filed by their revenue against admissibility credit on welding electrodes. The learned DR submits that the Tribunal in the case of **J.K. Cement Works vs. CCE, Jaipur** reported in **2007 (211) E.L.T. 235 (Tri. – Del.)** denied credit on welding electrode after considering the decision of the Hon'ble Rajasthan High Court. Hence, the denial of credit on welding electrodes is upheld.
- (e) **Winding Wire :-** The Commissioner (Appeals) has observed that the winding wire used as input for capital goods and therefore it is not eligible for credit. The Tribunal in the case of **Commissioner of Central Excise, Chandigarh vs. Arihant Spinning Mills** reported in **2002 (147) E.L.T. 1181 (Tri. – Del.)** held that winding wire are the components/accessories/parts of machines and eligible for credit. In the case of **Commissioner of**

Central Excise, Indore vs. Hotline Glass Ltd.
reported in 2007 (210) E.L.T. 69 (Tri. – Del.), the Tribunal held that credit cannot be denied on the ground inputs used in the manufacture of capital goods which in turn used in the manufacture of the final product. In the present case, winding wire used as input for capital goods and therefore it is eligible for Cenvat credit.

3. In view of the above, credit on CAF Jointing Sheets, Winding Wire are allowed and denial of credit on welding electrode is upheld and credit on DE White Metal, Articles of Iron and Steel, Angles/Channels/Shapes and Sections are remanded back to the adjudicating authority for examination of the uses as stated above. As the issue involved, the availability of credit which is a interpretation various provisions of the law and therefore imposition of penalty is set aside. The appeal is partly allowed on the above terms.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK