

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/1292/2006-1293/2006-SM[BR]

Date 28/01/2008

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

To :
(1-2) M/S HINDUSTAN ZINC LTD
YASHAD BHAWAN, NEAR SWAROOP
SAGAR, UDAIPUR

M/S HINDUSTAN ZINC LTD

Appellant

Vs
Respondent

C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of Final order No. 176-177/2008-SM[BR] dated 27.12.2007 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

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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)

Per P.K. Das:

The appellant filed these appeals against denial of credit on Welding Electrodes and ~~imposed~~ penalty.

2. Ld. Advocate on behalf of the appellant submits that the Hon'ble Rajasthan High Court in the case of Shree Cement Industries rejected the Revenue appeal in respect of admissibility of Modvat credit on Welding Electrodes. He further submits that it is a case of interpretation of law and, therefore, the penalty is unwarranted.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He relied upon the decision of the Tribunal in the case of The L.H. Sugar Factories Ltd. Vs. CCE vide Final Order No. 1354-1360/07-SM (BR) dated 5.7.2007.

4. After hearing both the sides and on perusal of the records, it is seen that the Tribunal in the case of The L.H. Sugar Factories Ltd. (supra) denied credit on Welding Electrodes. The relevant portion of the said decision 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 cited 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.

3. In respect of M.S. plates and packing material, the Tribunal decided the appellant's own case. The appellants are entitled for such credit. Further, I find that Hon'ble Rajsthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. Vs. CCE reported in 2007 (214) ELT 510 held that goods once brought in factory for use in upkeep and maintenance of plant and machinery, which are directly used in the manufacture of excisable articles are the capital goods, and were certainly of subordinate necessity to such plant and machinery for the running of plant. The Revenue filed appeal and Hon'ble Supreme Court dismissed the appeal reported as 2007 (214) ELT A-115. In view of the above discussion, the denial of credit in respect of packing and M.S. Plates etc is set aside and appeal in this regard is allowed.

4. As the demand in respect of welding electrodes is upheld and the issue is now settled by the Larger Bench of the Tribunal, therefore, it is not a case for imposition of any penalty. The penalty imposed on the appellant is also set aside. The appeals are disposed of as indicated above."

5. Respectfully following the decision of the Tribunal in the case of The L.H. Sugar Factories Ltd. (supra), the denial of credit on Welding Electrodes is upheld and the penalty imposed on the appellant is set aside. The appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 27.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.