

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/472 TO474/2006-SM[BR]

Date 28/01/2008

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


To :
(12) M/S TRIVENI ENGG& INDS LTD.
UNIT-DEOBAND, DIST, SAHARANPUR

M/S TRIVENI ENGG& INDS LTD.

C.C.E. MEERUT I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 180-182/2008-SM[BR] dated 31.12.2007
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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR. RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal Nos.472 to 474/2006-SM

(Arising out of order in appeal No.202/CE/MRT.I/2005 dated 28.11.2005
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?

mc.

M/s Triveni Engg & Industries Ltd Appellant
(Rep. by Shri Rajesh Chhiber, Advocate)

Vs

CCE, Meerut-I Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 31.12.2007

Final Order No. 180-182/08-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The appellants filed these appeals against denial of credit on Welding Electrodes, MS Plates, Channels, Angles and HR Sheets etc. It is seen from

the impugned order that welding electrodes were used for repair and maintenance of the machines. The Larger Bench of 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 credit on welding electrodes as inputs or capital goods. So, the denial of credit on welding electrodes is upheld.

3. Regarding the denial of credit on MS plates, Channels, angles and HR sheets, etc., the Commissioner (Appeals) observed that these items were used for repair and maintenance of plant and machinery. The Hon'ble Rajasthan High Court in the case of Union of India Vs Hindustan Zinc Ltd reported in 2007 (214) ELT 510 (Raj) allowed credit on these items in upkeep of the plant and machinery. The Tribunal in the case of L.H. Sugar Factories Ltd Vs CCE by Final order No. 1354-1360/SM(BR) dated 5.7.2007 allowed credit on these items. The relevant portion in the case of L.H. Sugar Factories Ltd (supra) is reproduced below:-

“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 Rajasthan High Court in the case of Union of India Vs Hindustan Zinc Ltd 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 Curt 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 the appeal in this regard is allowed."

4. In view of the above, denial of credit on welding electrodes is upheld and credit on M.S. Plates, Channels, Angles, HR sheets etc are allowed. It is seen that the larger Bench of the Tribunal settled the issue on admissibility of credit on welding electrodes and, therefore, penalty is not warranted and accordingly penalty is set aside. The appeals are disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)