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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/2860/2006-2861/2006-SM[BR] Date 19/02/2008

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

To :
1-2) M/S U.G.SUGAR & INDUSTRIES LTD.
SEOHARA,DISTT-BIJNOR(UP)

M/S U.G.SUGAR & INDUSTRIES LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of Final order No. 309-310/2008-SM[BR] dated 12.2.2008 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,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 Publictions (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

COURT – II

EXCISE APPEAL NO. 2860-2861 OF 2006-SM

[Arising out of Order-in-Appeal No. 125-126-CE-MRT-II/2006 dated 30.06.2006 passed by the Commissioner (Appeals), Central Excise, Meerut-II]

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. U.G. Sugar Industries Ltd. — Appellants

Vs.

CCE, Meerut-II — Respondent

Appearance:

Shri Kamaljeet Singh, Advocate
Shri A.K. Rastogi, SDR for the Revenue,

Coram:

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

Date of Hearing: 12th February, 2008

FINAL ORDER NO. 309-310/08-SM(BR) dated 12.2.08

Per S.S. Kang:

Heard both sides.

2. The appellants filed these appeals against the impugned order whereby credit in respect of following items was disallowed:-

1) Welding Electrods,
2) H.R. Coils & sheets,
3) Jointing sheets,
4) Copper wire

3. I find that the issue regarding credit in respect of welding electrodes is now settled in favour of the Revenue by the Tribunal's decision in the case of Jaypee Rewa Plant, reported in 2003 (159) ELT 553 and Triveni Engg., reported in 2005 (186) ELT 158. The Tribunal held that the manufacturer is not entitled for credit in respect of welding electrodes as capital goods or inputs. In view of the above decisions denial of credit in respect of welding electrodes is upheld.

4. In respect of packing material M.S. plates, the Tribunal in the case of L.H. Sugar Factory vs. CCE vide Final Order No. 1354-1360/2007-SM(BR) dated 5.7.2007 has allowed the credit. Further, I find that Hon'ble Rajasthan High Court in the case of UOI vs.

Hindustan Zinc Ltd., reported in 2007 (214) ELT 510 (Tri.) has held that goods once brought in the factory for use to upkeep and maintenance of plant and machinery which are directly used for manufacture of excisable goods are capital goods and certainly a necessity for running of the plant. Revenue filed the appeal against this decision and the Hon'ble Supreme Court dismissed the same, as reported in 2007 (214) ELT A115. In view of the above decision, denial of credit in respect of packing material, ~~like~~ M.S. plates and winding wire is not sustainable and, hence, set aside.

5. In respect of penalty, I find that the issue in respect of credit on welding electrodes is now settled by the Larger Bench of the Tribunal, and prior to it divergent views were there. Therefore, it is not a fit case for imposition of penalty. In view of this penalty is not sustainable. Appeals are disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 13th February, 2008

RK