

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/2570/2006-SM[BR]

Date 04/03/2008

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

To :
M/S SARJOO SAHKARI CHINI MILLS
BELRAYAN, DISTT; LAKHIMPUR KHERI [U.P]

M/S SARJOO SAHKARI CHINI MILLS

Appellant

CCE,LOCKNOW

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.378/2008 -SM [BR] dated 22.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

CCE,LOCKNOW

2. Adv. / Consult SHRI. ATUL GUPTA C.S.

B-1/1289-A, VASANT KUNJ NEW DELHI-110070

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. 2570 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 33/CE/LKO/2006 dated 24/02/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

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? :
-
- M/s Sarjoo Sahkari Chini Mills Ltd. Appellant

Versus

CCE, Lucknow

Respondent

Appearance

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

Shri A.K. Rastogi, Authorized Representative (SDR)– for the Respondent.

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

DATE OF HEARING : 22/01/2008.

Final Order No. 378/08-SM(BR) Dated: 22-1-08

Per. P.K. Das :-

The appellant filed this appeal against denial of credit on Welding Electrodes and M.S. Plates, M.S. Angles and H.R. Sheets.

2. After hearing both the sides and on perusal of the records, I find that Larger Bench of the Tribunal in the case of Jaypee Rewa Plant vs. CCE, Raipur reported in 2003 (159) E.L.T. 553 (Tribunal – LB) disallowed credit on welding electrodes. Further, the Tribunal in the case of J.K. Cement Works vs. CCE, Jaipur reported in 2007 (211) E.L.T. 235 (Tri. – Del.) after considering the decision of Hon'ble Rajasthan High Court held that welding electrode is not eligible for Cenvat credit. Accordingly, denial of credit on welding electrode is upheld.

3. Regarding denial of credit on M.S. Plates, M.S. Angles and H.R. Sheets, Commissioner (Appeals) observed that the appellant submitted photocopy of chart showing the use of these items. He also observed that the appellant failed to give detail and specific use of these items. The learned counsel drew the attention of the Bench of the chart submitted before Commissioner (Appeals). It is seen that from the chart that these items were used for changing of damaged Vapour Pipes, Sulphur Gas Line, Vacuum Filter, New Hoppers. The learned DR submits that the appellant had not mentioned the name of the machinery, where these items were used. I find that there is no dispute these Vapour Pipes, Sulphur Gas Line, Vacuum Filter were used in the appellant's factory. The Hon'ble Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Limited reported in 2007 (214) E.L.T. 415 (Raj.) held that M.S./S.S. Plates and Sheets used in workshop meant for repair and maintenance, which were used for final product are eligible for Cenvat credit. In this case, it is seen that these items were used in the Vapour Pipes, Sulphur Gas Line, Vacuum Filter etc. at the appellant's factory and used for manufacture of final product. Respectfully, following the

decision of the Hon'ble Rajasthan High court, credit on these items are allowed.

4. I find that the denial of credit on welding electrode is decided by the Larger Bench of the Tribunal. As the issue relates to interpretation of the law, imposition of penalty is unwarranted.

5. In view of the above, denial of credit on welding electrode is upheld and the credit on other items are allowed. Penalty is set aside.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK