

**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/2483 TO 2489 /2006-SM[BR]

Date 04/03/2008

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

To :  
THE DHAMPUR SUGAR MILLS PVT.LTD.  
DHAMPUR [N.R.] DISTT;- BIJNOR [U.P] 246761

THE DHAMPUR SUGAR MILLS PVT.LTD.

Appellant

C.C.E. MEERUT I

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 379 -385 /2008-SM[BR] dated 31.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

C.C.E. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL  
PANDEY NAGAR, MEERUT - 250005.

2. Adv. / Consult SHRI. RAJESH KUMAR ADV.

24. DDA, SFS, FLAT MAUNT OF KAILASH  
EAST OF KAILASH 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)

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

E/Appeal Nos.2483 to 2489 /2006-SM

(Arising out of order in appeal No.60-66/CE/MRT.II/06 dated 31.3.06  
passed by the Commissioner of Central Excise (Appeals),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?

yes

M/s Dhamapur Sugar Mills Ltd

Appellant  
(Rep. by Shri Rajesh Kumar, Advocate)

Vs

CCE, Meerut-I

Respondent  
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 31.1.2008

Final order No. 379-385/2008-SM(BR)

Per P.K. Das:

These appeals are against denial of credit on Welding Electrodes, SE  
Copper Wire and Read Lead, Chemfloc 985, Mafloc 985 and Chem Mash.

2. After hearing both the sides and on going through the record, the eligibility of credit on those items are discussed below:-

(A) Welding Electrodes:- The learned Advocate submits that the Hon'ble Rajasthan High Court in the case of CCE Jaipur Vs Neer Shri Cement Ltd & Others Revenue Appeal Excise Reference No. 9/2002 by Order dated 8.8.2003 rejected the appeal of the Revenue on admissibility of credit on Welding Electrodes. He further submits that the Tribunal in the case of Indian Sugar Vs CCE Bangalore reported in 2006 (74) RLT 61 allowed credit on welding electrodes. The learned DR cited the decision of Larger Bench of the Tribunal.

I find that the Larger Bench of the Tribunal in the case of Triveni Engg Vs CCE Meerut reported in 2005 (186) ELT 158 and in the case of Jaypee Rewa Plant Vs CCE Raipur reported in 2003 (159) ELT 553 held that credit is not admissible on welding electrodes. After considering these decisions, denial of credit on welding electrodes is upheld.

(B) SE Copper Wire/Copper Wire:- The Commissioner (appeals) observed that these items may be eligible for capital goods but the appellants claimed it as input. It has been observed that the Larger Bench of the Tribunal in the case of CCE, Bangalore Vs Surya Roshni reported in 2001 (128) ELT 296 held that the assessee cannot get the modvat credit as capital goods which were claimed as inputs. I find that the Larger Bench of the Tribunal in the case of CCE, Meerut Vs Modi Rubber Ltd reported in 2000 (119) ELT 197 held that declaration filed by the assessee in terms of Rule 57-Q is sufficient for the purpose of extending credit under Rule 57A. The

Larger Bench had discussed this issue at length therefore, credit on these items is allowed.

(C) Read Lead, Chem Floc, Mafloc, Chem Mash:- The Commissioner (Appeals) observed that Read Lead is used to prevent the leakage of vapour of boiling house, Chemfloc and Mafloc were used as chemical for mud setting and Chem Mash is used as seal for sulphur Furnace for SO gas generation. It has been held that these items were not used directly or indirectly in relation to the manufacture of final product. The Tribunal in the case of KCP Sugar & Industries Ltd Vs CCE Guntur reported in 2004 (178) ELT 275 held that Asbestos packing is used for preventing leakage in pipes connected with flanges to transfer cane juice, is eligible for modvat credit. In this case, Read Lead is used to prevent the leakage of vapour of boiling house and therefore, it is eligible for modvat credit.

Regarding credit on Chem floc 985, Mafloc, Chem Mash, it is seen that in one adjudication order No. 11/MVD/06 dated 12.1.06, the Adjudicating Authority allowed the credit on these items. The use of these items have been stated in the said adjudication order, as under:-

*“As regard CENVAT credit taken by the notice on Nalco, Alkatreat, Indion and Chem Mesh falling under sub heading 3824.90 of the schedule to the Central Tariff Act, 1985, the notice pleaded that these are chemicals and are used for boiler feed water treatment to improve the quality of water in order to avoid corrosion of boiler tubes and the steam generated by this treated water is used in the manufacture of sugar and for evaporator body cleaning for scales softening, the sulphuric discolant is used for evaporator body cleaning for scale removing, the adorbim is used for cleaning the bacteria and prevent sugar losses while the antifoam is used to avoid the flow of foam scaling at different stages in the boiling house syrup and molasses pump to run it efficiently in relation to manufacture of sugar.*

*Considering the use of these chemicals in the manufacturing process sugar, I conclude that these are inevitable for the manufacture of sugar. Therefore, these chemicals are eligible inputs for availing of cenvat credit under Rule 2(k) of Cenvat Credit Rules, 2004 and accordingly, cenvat credit availed by the notice thereon is admissible to them.”*

In view of the above finding of the adjudicating authority, which were not challenged by the Revenue before the Commissioner (appeals), I find that the chemicals were used in relation to the manufacture of final product and these items are eligible for credit.

3. In view of the above, denial of credit on welding electrodes is upheld. Credit on other items is allowed. The denial of credit on welding electrodes was decided by the Larger Bench of the Tribunal and the penalty is not warranted. 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)