

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/ 1923 &1370 /2006 -SM [BR]

Date 05/03/2008

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

To :

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

M/S U.G.SUGAR & INDUSTRIES LTD

Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-II

Respondent

I am directed to transmit herewith a certified copy of Final order No. 386 -387 /2008 -SM[BR] dated 30.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-II
BHAISALI GROUND, MEERUT

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 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

Appeal No.1923 & 1370/2006-SM

(Arising out of order in appeal No.19-25/CE/MRT/11/06 dated 31.1.06
passed by the Commissioner of Central Excise (Appeals), Meerut-II)

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?

M

M/s U.G. Sugar & Industries Ltd

Appellant
(Rep. by Shri Kamaljeet Singh, Advocate)

Vs

CCE, Meerut-II

Respondent
(Rep. by Ms. A.P. Mittal, Jt CDR)

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

Date of Hearing: 30.1.2008

Final order no 386-87/2008-SM(BR)

Per P.K. Das:

The appellants filed these appeals against denial of credit on Welding Electrodes, MS Plates, Shapes, Sections, HR Sheets, Steel Sheets, Iron & Steel, CAF Joint Sheet, packing material.

2. After hearing both the sides and on perusal of record, I find that the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant Vs CCE Raipur reported in 2003 (159) ELT 553 held that modvat credit is not available in respect of welding electrodes and therefore, denial of credit on welding electrodes is upheld.

3. Regarding denial of credit on MS Plates, HR Sheets, both the authorities below observed that these items were used for making supporting structure in their factory. The Tribunal in the case of Kisan Cooperative Sugar Factory Ltd Vs CCE Meerut-I reported in 2007 (79) RLT 810 held that in absence of their specific use, such general item cannot be considered as component, spare or accessory of capital goods. In this case, it is observed that both these items were used in sheds and not eligible for credit.

4. CAF Jointing sheet, Asbestos, etc. were used as packing material. The Commissioner (Appeals) observed that these packing material were used at various sugar mills. It is observed by the Commissioner (Appeals) that these items are not within the definition of capital goods. In the case of KCP Sugar Industries vs CCE reported in 2004 (178) ELT 275 held that asbestos packing are used for packing in pipes to transfer the sugar from one station to another station for processing sugar are eligible for credit. Hence the credit on packing material is upheld.

5. In view of the above, denial of credit on welding electrodes and articles of iron and steel used in shed is upheld and credit on packing material is allowed.

6. The issue of denial of credit on these items was decided by the Larger Bench of the Tribunal and imposition of penalty is not justified.

- Accordingly, penalty is set aside. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Dās)
Member(Judicial)