

**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/1607/2006 -SM [BR]

Date 11/03/2008

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

To :  
SHARABAD CO-OPERATIVE SUGAR MILLS  
SHAHABAD MARKANDA, DISTT. KURUKSHETRA,  
HARYANA

SHARABAD CO-OPERATIVE SUGAR MILLS

Appellant

C.C.E. PANCHKULA

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 393 /2008 -SM [BR] dated 29.1.2008

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. PANCHKULA

SCO NO. 407 AND 408, SECTOR 8, PANCHKULA  
(HARYANA) 134119.

2. Adv. / Consult

MR.O.P. BATHLA

M.D. 57, ELDECO MANSIONZ, SOHNA ROAD, SECTOR 48, GURGAON 122002

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 AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No. 1607 of 2006-SM (BR)**

[Arising out of order in appeal No.469/GRM/PCK/05 dated 23.12.2005 passed by  
the Commissioner of Central Excise (Appeals), Gurgaon]

**Date of Hearing/ Decision:29.1.2008**

**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/s. Shahabad Co-operative Sugar Mills Ltd.

...Appellants  
[Rep. by Mr. O.P. Bathla, C.A.]

CCE, Panchkula

Vs.

Respondent  
[Rep. by Mr. B.S. Suhag, Authorized Representative (DR)]

**CORAM: Mr. P.K. Das, Member (Judicial)**  
Final Order No. 393/08-SM(BR) /Dated:29.1.2008

**Per P.K. Das:**

The appellant filed this appeal against denial of credit on Welding Electrodes, M.S. Plates, Angles, H.R. Sheets, Channels, Wire Mesh, Joints, etc. The appellant is engaged in the manufacture of sugar and molasses.

2. After hearing both the sides and on perusal of the records, I find that the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant Vs. Commissioner - 2003 (159) E.L.T. 553 (Tribunal-LB) disallowed credit on Welding Electrodes. Further, the Tribunal in the case of the J.K. Cement Vs. CCE reported in 2007 (211) ELT 235 after considering the decision of the Rajasthan High Court held that Welding Electrodes is not eligible for Cenvat credit. Accordingly, the denial of credit on Welding Electrodes is upheld.

3. Regarding the denial of credit on M.S. Plates, H.R. Sheets, Angles, H.R. Sheets, Channels, Wire Rods, Joints, the Id. Advocate submits that the adjudicating authority after examining the Chart submitted by the appellant allowed the credit on these items. He further submits that the Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. reported in 2007 (214) ELT 510 (Rajasthan) allowed credit on these items. He also relied upon the various decisions of the Tribunal. He further submits that the Commissioner (Appeals) passed the order without considering the use of these items.

4. Ld. DR submits that the Commissioner (Appeals) categorically observed that these items were used for structure and fabrication job. I find force in the submission of the Id. Advocate. He submits that the Commissioner (Appeals) passed the order without examining the Charts produced by the appellant in support of use of these items. The Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) held that M.S/S.S. Plates used in workshop meant for repair and maintenance of

machinery, which are used for manufacture of final product, are eligible for credit. Accordingly, the denial of credit on these items is set aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after examining the use of these items and the case laws cited by the ld. Advocate.

5. In view of the above, denial of credit on Welding Electrodes is upheld and the credit on other items is set aside and the matter is remanded back to the Commissioner (Appeals) for fresh decision. Needless to say that the Commissioner (Appeals) shall provide an opportunity of hearing to the appellant before taking decision. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 29.1.2008.

( P.K. Das )  
Member (Judicial)

Ckp.