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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/3373 -3374 &3379 -3380 /2005 –SM[BR]   Date 24/03/2008

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

To :
1-4) BAJAJ HINDUSTAN LTD.
PALIAKALAN, DISTT. LAKHIMPUR KHERI,U.P.

BAJAJ HINDUSTAN LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 462 -465 /2008 –SM[BR] dated 18.2.2008

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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.S.C. KAMRA & CO.
   B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029
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, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 3373-74 & 3379-80 of 2005 –SM (BR)

(Arising out of Order-in-Appeal No. 387-388-CE/2005 dated 26.7.2005 and 395-396-CE/2006 dated 28.7.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Lucknow)

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?**	No
3.	**Whether their Lordships wish to see the fair copy of the order?**	
4.	**Whether order is to be circulated to the Departmental authorities.**	

Bajaj Hindustan Ltd. Appellant

Vs.

CCE, Lucknow Respondent

Appearance:
S/Shri S.C. Kamra & G.K. Mahajan, Advocates - For appellant
Shri Sumit Kumar, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 18.2.2008

FINAL Order No. 462-465/08-SM(BR) dated 18/2/08

Per S.S. Kang:

Common issue is involved in these appeals, therefore, are being taken up together.

2. The appellant filed these appeals whereby credit in respect of welding electrodes and in respect of supporting structure was denied.

3. The contention of the appellant in respect of welding electrodes are used for repair and maintenance purposes and appellant relied upon the decision of Hon'ble Rajasthan High Court in the case of **M/s Neer Shree Cement Ltd.** in Reference No. 9/2002.

4. The contention of the Revenue is that the Larger Bench of the Tribunal in the case of **Jaypee Rewa Plant Vs. CCE** reported in 2003 (159) ELT 553 and in the case of **Triveni Engineering Vs. CCE** reported in 2005 (186) ELT 158 and in the case of **J.K. Cement Works Vs. CCE** reported in 2007 (211) ELT 235, after considering the decision of the Hon'ble Rajasthan High Court in the case of **M/s Neer Shree** held that credit in respect of welding electrodes is not admissible.

5. The Revenue also relied upon the subsequent decision of the Hon'ble Rajasthan High Court in the case of **Union of India Vs. M/s Hindustan Zinc Ltd.** in Appeal No. 75/2006 decided on 9th August 2007 where the Hon'ble High Court noticed the fact that in the Excise Appeal No.33/07, the Hon'ble High Court held that welding electrodes used by the assesee for repair and maintenance purposes are not entitled for credit.

6. I find that the issue regarding credit in respect of welding electrodes is now settled by the Hon'ble Rajasthan High Court in the decision which was noticed in the order dated 9th August 2007 in the case of **Hindustan Zinc Ltd.** In the case of **M/s Neer Shree Cement** (s), I find that the Hon'ble Rajasthan High Court only declined the reference made by the Revenue. In view of the latest decision of the Rajasthan High Court, I find no infirmity whereby credit in respect of welding electrode was denied.

7. Credit in respect of supporting structure was denied in the impugned orders on the ground that same are in the form of plates, channels, angles etc. and are items of general use, therefore, the same cannot be considered as capital goods.

8. The contention of the appellant is that these are not plates, sheets, angles and channels. The contention is that they had specifically ordered for sugar grader and staging structure and the same has been supplied under the invoices where it has been described as supporting structure for sugar graders and as per the packing list it was described as staging of sugar and sizer as per the order.

9. The appellant relied upon the various decisions of the Tribunal whereby the credit has been allowed in respect of the supporting structure.

10. I find that in this case, in the impugned order the finding is that the goods are in the form of plates, angles and channels only whereas the order placed by the appellant is in respect of

the part of supporting structure of the sugar grader and as per the packing list these are of part of staging for grader and sizer. The invoice also shows the supply of supporting structure for sugar grader. In these circumstances, I find that this issue requires re-consideration by the adjudicating authority to decide afresh after going through the evidence produced by the appellant. The impugned orders denying credit in respect of supporting structures on the ground that the same are of plates, channels and angles is set aside and matter is remanded to the adjudicating authority to decide afresh after affording an opportunity of hearing to the appellant. The appeals are disposed of as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM