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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/794 /2006-SM[BR]   Date 27/03/2008

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

To :
CCE,MEERUT-II
OPP SHAHEED SMARAK,DELHI ROAD,MEERUT

CCE,MEERUT-II   Appellant
Vs
M/S L.H.SUGAR FACROTIES LTD,   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 485/2008 –SM[BR] dated 4.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S L.H.SUGAR FACROTIES LTD,
   PILIBHIT (UP)
)
2. Adv. / Consult SHRI. KAPIL VAISH C.A.
   B-51 BUTLER PLAZA, CIVIL LINES BAREILLY

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, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 794 OF 2006-SM

[Arising out of Order-in-Appeal No. 297-CE/MRT-II/2005 dated 30.11.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-II]

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?	No
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?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

CCE, Meerut-II — Appellant

Vs.

M/s. L.H. Sugar Factories Ltd. — Respondents

Appearance:

Ms. Archana P. Tiwari, Jt.CDR for the Revenue,
Shri Kapil Vaish, C.A. for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Date of Hearing: 3rd March, 2008

FINAL ORDER NO. 485/08-SM(BR) dated 4.3.08

Per S.S. Kang:

Heard both sides.

2. Revenue has filed this appeal against the impugned order whereby benefit of credit in respect of capital goods, used for repair and maintenance of machinery, was allowed. The goods in question are Steel Plates, Joints, Channels, Shapes and Sections, M.S. Angles, etc. The case of the Revenue is that the capital goods, used for repair and maintenance, are not eligible for credit.

3. Case of the respondents is that the goods in question are used for replacement of old and worn out various parts of plant. The respondents are engaged in the manufacture of sugar and the goods in question are used for repair of juice tanks, water tanks, syrup tank, hopper, rake carrier, semi-castner, crane unloader, gantry etc. The respondents relied upon the decision of the Hon'ble Rajasthan High Court in the case of UOI vs. Hindustan Zinc Ltd., reported in 2007 (214) ELT 510.

4. I find that the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) has held as under:-

> "This Court concluded that goods once brought in factory for use in up-keep and maintenance of plant and machinery, which are directly used in manufacture of excisable articles, are the capital goods, and were certainly of subordinate necessity to such plant and

machinery for the running of plant and is otherwise essential for its smooth and regular operations. Without proper up-keep and maintenance, the principal plant and machinery cannot function properly. Use of such capital goods is essential for smooth running of plant with greater efficiency. In other words, the goods in question are essential supplement to the plant and machinery for use in manufacturing goods, for its greater efficiency and better results and thus, it is an integral part of the process with which the primary machines are engaged. Looked from these aspects, there is no impediment for the goods in question qualifying as capital goods eligible for Modvat credit.

4.Consequently, such goods which are necessary for running of plant and up-keeping of the machinery directly involved in the manufacturing and products were held to be eligible to avail Modvat credit."

Further, I find that appeal filed by the Revenue against the decision of the Hon'ble Rajasthan High Court has been dismissed by the Hon'ble Supreme Court, reported in 2007 (214) ELT A 115. In view of the above decision I find no infirmity in the impugned order. Accordingly, appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 4th March, 2008

RK