

**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/1273/2005-SM[BR]

Date 01/04/2008

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

To :  
U.P.STATE SUGAR CORPORATION LTD.  
ROHANA KALAN, DISTT. MUZAFFARNAGAR  
251202

U.P.STATE SUGAR CORPORATION LTD.

C.C.E. MEERUT I

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 531 /2008-SM[BR]&M/109/2008 dated 4.1.2008 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

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, 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)

**IN THE CUSTOMS, EXCISE & SERVICE  
TAX APPELLATE TRIBUNAL,  
WEST BLOCK NO. 2, R.K. PURAM,  
NEW DELHI  
PRINCIPAL BENCH, NEW DELHI**

**E/ROA No. 147/07 in and  
Excise appeal No. 1273 of 2005**

[ROA arising out of CESTAT Final Order No. 470/07-SM dated 2.3.2007 and appeal arising out of Order-in-Appeal No. 621-CE/APPL/MRT-I/04 dated 31.12.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I]

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

M/s. U.P. State Sugar Corpn. Ltd.

Appellants

Vs.

CCE, Meerut-I

Respondent

Appearance:

Shri Bipin Garg, Advocate for the appellants,  
Shri S.L. Meena, SDR for the Revenue.

Coram:

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

Misc Order No. 109/08-SM(BA) Date of Hearing: 4.1.2008

FINAL ORDER NO. 531/08-SM(BA) dated 4-1-08

**Per S.S. Kang:**

Heard both sides.

2. The applicants filed this application for recalling of the final order dated 2.3.2007 on the ground that the applicants challenged the denial of credit in respect of welding electrodes, sheets, plates & angles etc. The contention is that on the date of hearing 2 appeals of the same applicants were fixed i.e. E/1272/05 and E/1273/05, and in case of appeal No. E/1272/05 the only issue involved was denial of credit in respect of welding electrodes and the same has been decided subsequently. In the present appeal i.e. E/1273/05 only one issue regarding denial of credit on welding electrodes is decided, and other issue regarding denial of credit on sheets, plates and angles etc. was not decided.

3. I have gone through the appeal memo. I find that there is no finding in the final order regarding denial of credit on sheets, plates and angles etc. Therefore, the final order dated 2.3.2007 is recalled. ROA is allowed. Appeal is restored to its original number and heard afresh.

4. The appellants filed this appeal against the impugned order whereby credit in respect of welding electrodes, sheets, plates were denied. I find that the issue regarding denial of credit in respect of

welding electrodes is now stands settled by following two Larger Bench decisions of the Tribunal:-

- (i) Triveni Engg. Vs. CCE – 2005 (186) ELT 158 (Tri.-LB);
- (ii) Jaypee Rewa Plant vs. CCE, Raipur – 2003 (159) ELT 553 (Tri.-LB)

In view of the above decisions I find no infirmity in the impugned order whereby credit in respect of welding electrodes is denied. Further, that as the issue is now decided by the Larger Bench, in view of divergent views, therefore, it is not a case for imposition of penalty regarding denial of credit in respect of welding electrodes.

5. In respect of denial of credit on sheets, plates, and angles etc., I observe that the same was denied on the ground that the these items are of general use and the same cannot be used as such as components/parts of specific goods.

6. The appellants relied upon the decision of the Hon'ble Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Ltd., reported in 2007 (214) ELT 510. I find that the Hon'ble High Court while considering the decision of the Tribunal whereby Modvat credit in respect of M.S./S.S. plates was allowed has held as under:-

“3. 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 upkeep 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.”

7. The aspect, whether the items in question are used as parts of specific goods or used for repair or maintenance is not considered by the lower authorities. Therefore, matter requires reconsideration. The impugned order denying the credit in respect of plates, sheets and angle, etc. is set aside and remanded to the lower authorities for afresh decision after affording an opportunity of hearing to the appellants. The adjudicating authority will also decide the issue of imposition of penalty in this regard afresh.

8. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)  
VICE PRESIDENT

Dated 4<sup>th</sup> January, 2008

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