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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/3510 & 3817 /2005 –SM[BR] Date 30/05/2008

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

To :
1-2) U.P.STATE SUGAR CORPORATION
BIJNOR -246701[U.P]

U.P.STATE SUGAR CORPORATION Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 830- 831 /2008 –SM[BR] dated 27.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1 /1289 –A, VASANT KUNJ NEW DELHI-110070

3. S.D.R.
~~4. J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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

E/Appeal No. 3510 & 3817/05

(Arising out of order in appeal No.154/CE/MRT.I/05 dated 30.8.05 & No.170/CE/MRT.I/05 dated 30.9.05 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

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?

NO

M/s UP State Sugar Corp Ltd — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Meerut-I — Respondent
(Rep. by Shri Atul Rastogi, DR)

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

Date of Hearing: 27.3.08

Final Order No. 830 – 831 /2008-SM(BR)

Per P.K. Das:

Common issue is involved in these appeals. Therefore, both the appeals are being taken up together for disposal. The appellants filed these appeals against denial of credit on Welding Electrodes, Plain Plates, Joists, Angles, and Chennels of Iron & Steel products, Packing and Jointing material and Thermo 13 Pin for Chain.

2. After hearing both the sides and on perusal of record, admissibility of credit on these items ~~was~~ are discussed: As under :-

<u>a) Welding Electrodes:</u> The Larger Bench of the Tribunal in the case of JP Rewa Plant Vs CCE reported in 2006 (158) ELT 133 (Tri.-LB) held that credit is not admissible on welding Electrodes. The Tribunal in the case of JK Cement Vs CCE Jaipur reported in 2007 (211) ELT 235, after considering the decision of the Hon'ble Rajasthan High Court, disallowed credit on Welding Electrodes. So, denial of credit on Welding Electrodes is justified.

b) <u>Plain Plates, Joists, Angles and Channels of Iron & Steel Products:-</u>

It is seen from the impugned order that the appellants contended that these items were used for replacement of worn out parts of different machines. It is also contended that these items were used for maintenance of machinery and fabrication of various parts. The learned Advocate 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 wherein it has been held that credit on MS sheets and plates are admissible as used for maintenance of machinery in the work shop. The learned DR submits that these items were used for construction. I find that these items were used for maintenance and repairing of machinery and credit is admissible. However, credit would be denied if it is used in the construction.

<u>c)Packing and Jointing etc</u>.:- It is observed by the Commissioner (Appeals) that these items were used to prevent leakage in pipes used in the manufacture of final product. The Tribunal in the case of UP Sugar & Industries Vs CCE Guntur reported in 2004 (176) ELT 167 held that credit on packing material cannot be denied which were used to prevent leakage of the pipes used in the manufacture of final product. So, denial of credit on these items is not justified.

<u>d) Thermo 13 Pin for Chain:-</u> The learned Advocate submits that these items were used for packing as parts of machinery. The Commissioner (Appeals) observed that the ~~above~~ appellant did not mention the specific use of these items. I find that the use of these items is required to be examined by the lower authorities.

3. In view of the above, denial of credit on welding electrodes is upheld. Denial of credit on packing material is set aside. Denial of credit on iron and steel items such as SS plates, channels, etc. used in the fabrication and maintenance of parts for machinery are eligible for credit However, it is made clear that if these items used for construction are not eligible for credit. Denial of credit on Thermo 13 Pin for Chain is set aside and it is remanded to the Adjudicating Authority to verify the use of these items and to decide in accordance with law. The Larger Bench of the Tribunal decided the eligibility of credit on welding electrodes and penalty is not warranted.

Accordingly, penalty is set aside. Both the appeals are disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*