(18)

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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

ppeal No. E/1536/2006-1537/2006-SM[BR]& E/1202-1203 &1206-1207 /2006-SM[BR] Date 27/06/2008

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

M/S J.K.CEMENT WORKS — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1023 -1028 /2008 –SM[BR] dated 1.4.2008

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 J.K.CEMENT WORKS
MANGROL,CHITTORGARH(RAJ)

[2]M/S J.K.CEMENT WORKS. NIMBAHERA, CHITTORGARH [RAJASTHAN]
[3-4] M/S J.K. CEMENT WORKS, KAILASH NAGAR, NIMAHERA, DISTT; CHITTORGARH [RAJASTHAN]
[5-6]M/S J.K. CEMENT WORKS, KAILASH NAGAR, NIMBAHERA DISTT; CHITTORGARH[RAJASTHAN]

2. Adv. / Consult

SHRI, BIPN 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)

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

Excise Appeals No.1536-37 of 2006

[Arising out of Order-in-Appeal No.134-135(HKS)CE/JPR-II/2006 dated 8.3.2006 passed by the Commissioner of Central Excise (Appeals-II), Jaipur]

Date of Hearing/ Decision:01.04.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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.

CCE, Jaipur-II ...Appellants
[Rep. by Shri B.S. Suhag, DR]

Vs.

M/s. J.K. Cement ....Respondent
[Rep. by Shri Bipin Garg, Advocate with Shri Atul Gupta, Co. Secretary]

Appeals Nos. 1202-1203 & 1206-1207 /06

M/s. J.K. Cement ..Appellants
(Rep. by Shri Bipin Garg, Advocate)

Vs.

CCE, Jaipur-II ....Respondent
(Rep. by Shri S.Gautam, DR)

[(Arising out of Order-in-Appeal No.2(HKS)CE/JPR-II/2006 dated 12.1.2006 in Appeals Nos.1202-1203 and Order-in-Appeal No.65(HKS)CE/JPR-II/2006 dated 20.01.2006 in Appeals Nos.1206-1207/06-SM (BR))

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.1023 to 1028/08-SM(BR)/Dated:01.04.2008

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all the appeals are taken up for disposal.

2. The assessees filed the appeals against denial of Credit on Welding Electrodes, Oxygen and D.A. Gas. Revenue also filed appeal against one Order of the Commissioner (Appeals), whereby the Credit on Welding Electrodes was allowed.

3. Ld. Advocate on behalf of the assessees submits that the Welding Electrodes are accessories of Welding Machine, which is undisputedly a capital good. Hence the Credit on Welding Electrodes, Oxygen and D.A. Gas is admissible to them. He further submits that Welding Electrodes, Oxygen and D.A. Gas are essential items of the Welding Machine without which the Welding Machine cannot work. He also submits that the Commissioner (Appeals) rightly allowed the Credit on Welding Electrodes, Oxygen and D.A. Gas. He further submits that the above submissions were not placed before the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant Vs. CCE – 2003 (159) ELT 553 (T-LB).

4. Ld. DR on behalf of the Revenue submits that the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant (supra) held that Welding Electrodes is not eligible for Credit. The Tribunal in the case of J.K.

Cement Works Vs. CCE, Jaipur reported in 2007 (211)ELT 235, after considering the decision of the Hon'ble Rajasthan High Court, denied the Credit on Welding Electrodes, Oxygen and D.A. Gas.

5. 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 (supra) held that Welding Electrodes, Oxygen and D.A. Gas are not eligible for Credit. So, the denial of Credit on Welding Electrodes, Oxygen and D.A. Gas is justified. I find that the denial of Credit on Welding Electrodes, Oxygen and D.A. Gas was decided by the Larger Bench of the Tribunal and, therefore, penalty is not warranted.

6. In view of the above discussion, denial of credit on Welding Electrode, Oxygen and D.A. Gas is upheld. Penalty is set aside. All the appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 1.4.2008.

(P.K. Das)
Member (Judicial)

ckp.