TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

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/4026/2006 – SM[BR] Date 27/11/2008

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

To :
C.C.E.RAIPUR

DHAMTARI ROAD, TIKRAPARA RAIPUR.

C.C.E.RAIPUR Appellant

Vs

M/S BHARAT ALUMINIUM CO LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1533 / 2008- **SM[BR]** dated 7.11.2008

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 BHARAT ALUMINIUM CO LTD

BALCO NAGAR, KORBA(CG)

2. Adv. / Consult SHRI B.L. NARSIMHAN ADV.

N/V;---------------------------------

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 4026 of 2006-SM

(Arising out of Order-in-Appeal No. 155/RPR-I/2006 dated 28.08.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur).

DATE OF HEARING : 07.11.2008
DATE OF DECISION : 07.11.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, 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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

CCE, Raipur ... **Appellant**
(Rep by Sh. R.K. Verma, DR)

versus

M/s Bharat Aluminium Co. Ltd. ... **Respondent**
(Rep. by Sh. B.L. Narsimhan, Adv.)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

Final **ORDER NO.** 1533/08-SM(PB)

PER JYOTI BALASUNDARAM :

The respondents herein are engaged in the manufacture of aluminium products falling under Chapter 76 of the Central Excise Tariff Act, 1985. They were availing facility of Cenvat Credit on duty paid inputs and capital goods under Rule 57-Q read with Rule 57-T of the erstwhile Central Excise Rules, 1944. A show cause notice dated 31.07.1996 was issued to them proposing to disallow irregular Cenvat Credit of Rs. 7,06,111/- availed by them and for imposition of penalty on the ground that they had wrongly availed Cenvat Credit on Bucket elevator chain, Bucket for elevator, Gas collecting hood, and Maly kote grease, Welding electrodes, Gas filling used in smelter house, HA refractory cement, Rigid stem thermal, Aluminium wire, Brass Wire, M.S. forged round, M.S. round, Forged steel round, and Hot dia steel. Vide order dated 09.03.2006 the Additional Commissioner of Central Excise disallowed the entire credit and imposed a penalty of Rs. 2,00,000/- on the ground that none of the items qualify as capital goods. The Commissioner (Appeals) set aside the adjudication order and allowed the appeal of the respondents; hence this appeal against extension of credit on the following items :

(i) Bucket elevator chain;
(ii) Bucket for elevator;
(iii) Aluminium Wire;
(iv) Brass Wire;
(v) M.S. Forged Round;
(vi) M.S. Round;
(vii) Forged Steel Round;
(viii) Hot Dia Steel; and
(ix) Welding Electrodes

2. I have heard both sides. The definition of 'capital goods' at the relevant point of time i.e January, 1996 reads as under :

> **"Capital goods means –**
>
> **(a) machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products;**
>
> **(b) components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose; and**
>
> **(c) ...."**

The show cause notice proceeded on the basis that Bucket elevator chain and Bucket for elevator are parts of handling equipment/parts of electrostatic precipitator. According to the Revenue, they do not play any role in the functioning of any machinery of which they had claimed to be parts. However, it is an admitted position in the show cause notice that these items are parts of material handling equipment/electrostatic precipitator. It is not the case of the Department that, material handling equipment/electrostatic precipitator are not machines, machinery, plant equipment etc. used for producing or processing any goods or for bringing about any change in any substance for the manufacture of final products. Hence, the parts thereof ~~on~~ which are the disputed above mentioned items qualify for being considered as 'capital goods'.

3. As regards the remaining items, their admitted use is as under:

S.NO.	DESCRIPTION	USES
1.	Welding Electrodes	For welding purpose
2.	Aluminium Wire	For joining the hockey stick of aluminium with steel anode studs
3.	Brass Wire	Electrodes for cutting dies in the wire cut machine.
4. 5. 6.	M.S. Forged Round M.S. Round Forged Steel Round	For repairing the anode stands of electrolytic cell
7.	Hot Dia Steel	For making dia for extrusion

4. According to the Revenue, electrodes used for welding purposes and other items used for repair and maintenance of anode studs of electrolytic cells, cannot be used directly as capital goods or parts/spares/accessories of the capital goods. However, this contention is not tenable – in the case of **Hindustan Zinc Ltd. vs Union of India,** 2008 (228) ELT 517 (Raj.), the Hon'ble Rajasthan High Court has held that Cenvat Credit is admissible on welding electrodes used for repairs and maintenance of plant & machinery. In the case of **Union of India vs Hindustan Zinc Ltd.,** 2007 (214) ELT 510 (Raj.), the Hon'ble Rajasthan High Court has held that MS/SS plates used in workshop meant for repair and maintenance of machinery which are used for manufacture of final product are eligible to avail credit. This decision has been upheld by the Apex Court as reported in 2007 (214) ELT A115 (SC). Once items, used for maintenance and repair of machinery, have been held to be eligible for Cenvat/Modvat Credit, there is no substance in the Department's plea that items used for such purpose are not eligible to Cenvat/Modvat Credit.

4. In the light of the above discussion, I hold that Bucket elevator chain and Bucket for elevator are eligible to credit as parts of material handling equipment and the other items which are used for repair and maintenance of machinery are eligible to credit in the light of the decisions cited (supra).

5. In the result, I uphold the impugned order and reject the appeal.

(Operative part was pronounced in the open Court on the 7th day of November, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay