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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/650 /2007, 678 /2007 – SM [BR] Date 06/01/2009

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW

C.C.E. LUCKNOW Appellant

Vs

M/S RUPAPUR SUGAR COMPLEX (NOW D.S.L. SUGAR) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1668 -1669 / 2008- SM[BR] dated 29.12.2008 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 RUPAPUR SUGAR COMPLEX (NOW D.S.L. SUGAR)
RUPAPUR HARDOI

२. THE GENERAL MANAGER
M/S RUPAPUR SUGAR COMPLEX (NOW DSCL SUGAR)
RUPAPUR, DISTT HARDOI

2. Adv. / Consult SHRI KAPIL VAISH ADV.
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. 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)

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

Excise Appeal Nos. 650 & 678 of 2007-SM
[Arising out of Order-in-Appeal No. 172-CE/LKO/06 dated 21.12.2006 passed by the Commissioner (Appeals) Central Excise & Service Tax, Lucknow]

Date of Hearing/Decision : 26.12.2008/7

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?	No
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, Lucknow — Appellant
[Rep. by Mr. S.K. Bhaskar, DR for the appellant]

Vs.

M/s Rupapur Sugar Complex (now DSCL Sugar) — Respondent
[Rep. by Mr. Kapil Vaish, Advocate for the respondent]

And

M/s Rupapur Sugar Complex (now DSCL Sugar) — Appellant
[Rep. by Mr. Kapil Vaish, Advocate for the appellant]

Vs.

CCE, Lucknow — Respondent
[Rep. by Mr. S.K. Bhaskar, DR for the appellant]

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No 1668-1669/08-SM(BR)

Per Jyoti Balasundaram:

In this case credit of Rs. 14,667/- was disallowed as representing cenvat credit wrongly availed on welding electrodes used in repair and maintenance. The period of dispute is February 2004 to June 2004. Penalty of Rs. 11,000/- imposed on the assessee was set aside by the Commissioner (Appeals) who however upheld the denial of credit. The Revenue is in appeal against setting aside of the penalty and the assessee has filed appeal against the denial of credit on welding electrodes.

2. I have heard both sides in both the appeals. I find that the issue of eligibility to take credit on welding electrodes used in repair and maintenance stands settled in favour of the assessee by the decision of the Rajasthan High Court in the case of Hindustan Zinc Limited vs. Union of India reported in 2008 (228) ELT 517 (Raj.). Following the ratio of the above judgement which has been subsequently followed by the Tribunal, I set aside the denial of credit, and allow the assessee's appeal. For the same reason the imposition of penalty is not justified and I, therefore, reject the Revenue's appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]