

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/1303/2006-SM[BR]

Date 16/04/2008

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

To :
M/S JINDAL STEEL & POWER LTD,
P.B.NO-16,KHARISIA ROAD,RAIGARH(CG)
M/S JINDAL STEEL & POWER LTD,

Appellant

C.C.E. RAIPUR

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 638 /2008 -SM[BR] dated 18.1.2008
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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

MR.L.P. ASTHANA & MS REENA KHAIR

R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

3. S.D.R.

4. I.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 Publications (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.1303 /2006-SM

(Arising out of order in appeal No.7 & 8/RPR.I/06 dated 24.1.06 passed by
the Commissioner of Central Excise (Appeals), Raipur)

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?

yes

M/s Jindal Steel & Power Ltd

Appellant
(Rep. by Ms. Reena Khair, Advocate)

Vs

CCE, Raipur

Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 18.1.2008

Final Order No. 638/08-SM(BR)

Per P.K. Das:

The issue involved in this case is as to whether the items Mudgun clay, EBT filling mass and HSS Tool Bits are inputs or capital goods. The appellants used these items as inputs and availed credit of 100% duty. Show cause notice was issued proposing to recovery 50% of the duty as the items are capital goods. The Adjudicating Authority held that these items are inputs. Revenue filed appeal whereby the Commissioner (Appeals) held that these items are capital goods. The appellants filed this appeal against the order of the Commissioner (Appeals).

2. The learned Advocate for the Appellants submits that the use of these items as mentioned in the adjudication order, are clearly indicative that these items were used in relation to manufacture of final products. She further submits that the Commissioner (Appeals) had not disputed the use as mentioned in the adjudication order. However, the Commissioner (Appeals) held that these items are refractory materials and covered under the definition of "capital goods". She relied upon the following decisions of the Tribunal:-

- a) Rathi Udyog Ltd Vs CCE, Meerut
2000 (121) ELT 524 (Tribunal-LB)
- b) Union Carbide India Ltd Vs CCE Calcutta-I
1996 (86) ELT 613 (Tribunal)

She further submits that the Hon'ble Supreme Court and the Hon'ble High Court held that assessee are entitled to modvat credit on Ramming Mass, Filter Glass, Filter Mass under Rule 57-A of the erstwhile Central Excise Rules, 1944. She relied upon the following cases:-

- a) CCE Bangalore Vs. Excorts Mahle Ltd
2003 (154) ELT 321(S.C)

- b) CCE Chandigarh Vs Bhushan Alloys & Steels Ltd
2005 (180) ELT 23 (P&H)
- c) Shimoga Steels Ltd Vs CCE Bangalore
2002 (142) ELT 304 (Kar.)

3. The learned DR reiterates the findings of Commissioner (Appeals). He submits that these items are refractory material which are covered within the definition of capital goods. He submits that HSS tools are used on Lathe machinery for turning, machining forking work.

4. After hearing both the sides and on perusal of record, I find that the adjudicating authority had discussed the use of these items in the adjudication order, which are reproduced below:-

“In the instant case, I find that the party is having Blast Furnace installed in their unit for manufacturing their final product and use Mudgun clay in relation to manufacture of pig iron. Basically, this item by description is clay made up of coke breeze, plastic clay, gorg and silicon carbide, which is used to close tap hole of blast furnace after each tapping of hot metal for pig casting. This clay is pushed with gun like barrel at the tape hole to close the hole.

The use of the item EBT (Eccentric Bottom Taphole) Filling Mass is similar to that of Mudgun clay. The difference is that this EBT Filling Mass is used for closing the tap hole of electric arc furnace. This tap hole is located at the centre of the bottom of the furnace, where raw materials are melt. In this case the sand like mass is used to fill a tube, the bottom of which is closed with a piece of hard metal. Opening and closing of this tube hole is operated pneumatically. This filing mass is used for once only. After each tapping of liquid metal this mass is thrown away and the tube hole is used for pouring liquid into lade refining furnace. Considering the use and function of this item it can confidently be said that this is used as input in relation to manufacture of steel and not as any machine or component or spare or accessory of any eligible capital goods.

As regards the use and function of HSS (High Speed Steel) Tool bits, the party submitted that they have already explained the same in their letter dated 28.11.2003 to the Superintendent, Central Excise Range, Raigarh. That when the lathe machine or shapping machine or any cutting machine is purchased, tool bits do not accompany them as a component or accessory. Such lathe machine or shaping machine or any cutting machine is purchased in its complete form for wider purchase but without the tool bits. It is the users, in the instant case the party who procures and uses the tool bits according to their specific need and choice and uses the tool bits for specific purpose of manufacturing a product. Hence, the tool bits are used in relation to manufacture of a product and not that the tool bits are used as component or accessory of any machine, equipment or apparatus."

5. The Commissioner (Appeals) observed that these are substances which can withstand very high temperature, pressure and chemical action and these are nothing but refractory material and not covered within the definition of input. The definition of 'input' under Rule 2(g) of CENVAT Credit Rules, 2002 is reproduced below:-

"'input' means all goods, except (light diesel oil) high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared alongwith the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

Explanation 1.- [The light diesel oil, high speed diesel oil] or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer."

○ 6. I find that the Commissioner(Appeals) observed that these items were used in relation to manufacture of steel and not as a machine, or spare or accessory of any goods. It has also been observed that definition of 'capital goods' is more specific than the general meaning given to 'inputs' in Cenvat Credit Rules, therefore, these items would be covered by the definition of capital goods. Hon'ble Punjab & Haryana High Court in the case of Bhushan Alloys & Steels Ltd (supra) held that Modvat credit in respect of mortar, centable powder, refractory, ramming mass used in manufacture of notified finished product is available under Rule 57-A of Central Excise Rules, 1944. The Larger Bench of the Tribunal in the case of Rathi Udyog Ltd (supra) allowed credit on Grinding Wheels as inputs. The relevant portion of the said decision is reproduced below:-

"There is no dispute that the 'grinding wheels in question are parts of grinding machines and these are used for smoothing the surface of components. Therefore, they clearly perform a function in relation to the manufacture of the goods. We, therefore, hold that they are eligible for modvat credit under Rule 57A. We thus confirm the view taken by the Tribunal in the case of Goetze India Ltd(supra) and Batliboi & Co.(supra). The reference is thus answered in favour of the assessee and the appeals are also allowed."

7. The Hon'ble Supreme Court in the case of Escorts Mahle Ltd (supra) held that Ramming mass, fibre glass and filter mesh are used in the manufacture of steel lining apparatus and entitled to modvat credit under Rule 57-A of the erstwhile Central Excise Rules. In view of the decisions of the Hon'ble Supreme Court, High Court and the Tribunal and the uses as mentioned in the adjudication order, I find that the adjudicating authority

rightly held these items are inputs. Accordingly, the impugned order is set aside and the adjudication order is restored. The appeal is allowed.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)