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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/3002 -3003 /2006-SM[BR] Date 02/05/2008

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

To :
(1-2) JAYPEE BELA PLANT.
(UNIT-JAIPRAKASH ASSOCIATES LTD)JAYPEE
PURAM,DISTT-REWA(MP)
JAYPEE BELA PLANT.

Appellant
Vs
Respondent

C.C.E. BHOPAL

I am directed to transmit herewith a certified copy of **Final order No.** 671- 672 /2008 –SM[BR] Dated 12.3.2008

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. BHOPAL
48,ADMINISTRATIVE AREA,AREA HILLS,HOSHANGABAD ROAD,BHOPAL
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 Nos.E/3002-3003 of 06-SM (BR)

[Arising out of Order-in-Appeal No.109-CE/BPL/2006 dated 20.4.2006 of the Commissioner (Appeals), Central Excise, Bhopal]

Date of Hearing/ Decision: 12.3.2008

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?	:	N.C.
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

M/s.Jaypee Bela Palnt — Appellants

[Rep. by Mr. Ravi Raghavan, Advocate]

Vs.

CCE, Bhopal — Respondent

[Rep. by Mr. S.L. Meena, Authorized Departmental Representative (DR)]

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

Final **ORDER NO. 671-672/08-SMC(BRD)/Dated:12.3.2008**

Per P.K. Das:

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

2. The appellants filed these appeals against denial of credit on various items of Iron and Steel products. It is seen from the order of the Commissioner (Appeals) that these items were largerly used for fabrication/manufacture of machine and machineries, which are attached to the earth. The Commissioner (Appeals) observed that these items are not within the definition of capital goods.

3. Ld. Advocate submits that Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. reported in 2001 (214) ELT 510 (Rajasthan) allowed the credit on these items. He also relied upon the decision of the Tribunal in the case of Bellary Steel & Alloys Ltd. Vs. CCE, Belgaum reported in 2005 (180) ELT 92 (Tribunal-Bang.).

4. Ld. DR reiterates the findings of the Commissioner (Appeals).

5. After hearing both the sides and on perusal of the records, I find that these items were used for repair and maintenance of the machineries and also for fabrication/manufacture of the various items as a part of the

modernization and upgradation of their cement plant. The Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) 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 for cenvat credit. The adjudicating authority observed that the iron and steel items were used for repairs and maintenance of machines, which are fixed to the earth. The Tribunal in the case of Bellary Steel & Alloys Ltd. (supra) held that credit cannot be denied on the capital goods as these are embedded to earth.

6. In view of the above decision, I find that there is no reason to deny the credit on these items. Accordingly, the impugned orders are set aside and both the appeals are allowed with consequential relief.

Order dictated & pronounced in open court on 12.3.2008.

(P.K. Das)
Member (Judicial)

Ckp.