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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/3425 /2006-SM[BR] & E/ 3204 /2007-SM[BR] Date 14/05/2008

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

To :
(1-2) M/S PANKAJ OXYGEN LIMITED.
FACTORY AT 615,URLA INDUSTRIAL
COMPLEX,RAIPUR 493224

M/S PANKAJ OXYGEN LIMITED. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 761 - 762 /2008 –SM[BR] dated 5.5.2008 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.S.N.SINHA MAHAPATRA

   27/33, K.M. NASKAR ROAD, REGENT PARK P.O., KOLKATA
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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 3425 of 2006-SM(BR) & 3204 of 2007-SM

(Arising out of Order-in-Appeal No. 94/RPR-I/06 dated 7.6.06 & 190/RPR-I/2007 dated 12.9.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur)

For approval and signature

HON'BLE MR. S.S. KANG, 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?	
2.	Whether it would 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?	
4.	Whether order is to be circulated to the Departmental authorities.	

M/s Pankaj Oxygen Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

Appearance:
Shri S.N. Sinha, Advocate - For appellant
Shri S. Gautam, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 5.5.2008

Final Order No. 761-762/08-SM(BR) ....dated 5.5.08

Per S.S. Kang:

Heard both sides.

2. The appellant filed these appeals against the impugned orders whereby credit in respect of oxygen and acetylene gases was disallowed on the ground that the same was used for maintenance as well as also for manufacture of the capital goods. It is admitted fact that gases are used for welding purpose only. The applicant also filed appeal against the order passed by the lower authority whereby the amount of refund has been adjusted against the present demands.

3. The contention of the appellant is that now the definition of input is that the goods can be used in or in relation to the manufacture or for any other purpose within the factory are entitled for credit. In the present case, as the items in question are used

within the factory for the manufacture of capital goods, therefore, credit cannot be denied.

4. The Revenue submitted that Larger Bench of the Tribunal in the case of M/s Jaypee Rewa Plant Vs. CCE reported in 2003 (159) ELT 553 held that credit in respect of gases which are used for welding purposes are not eligible for credit. Subsequently, the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. Vs. CCE vide appeal No. 33/2007 held that the credit is not available in respect of items in question. In view of the above decision, I find no infirmity whereby the credit was disallowed and the same were adjusted against the demand. However, keeping into the facts and circumstances of the case as earlier there was divergent views in respect of the eligibility of credit on the items in

question and the issue is resolved by the Larger Bench, therefore, the appellants are not liable for penalty. The penalties imposed in the impugned order are set aside.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM