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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

Date 16/02/2009

Appeal No. E/838 /2007 – SM [BR] & E/ CO/ 113/ 2007

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

To :
C.C.E, RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR-492001 Appellant
C.C.E, RAIPUR Vs
Respondent

BHARAT ALUMINIUM CO. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 172 / 2009 –SM[BR]** dated 23.1.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
BHARAT ALUMINIUM CO. LTD.
BALCO NAGAR, KORBA (C.G.)
2. Adv. / Consult
SHRI V. LAXMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI -29.

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
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(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

E/Appeal No.838/2007 &
E/CO/113/2007-SM

[Arising out of Order-in-Appeal No.207/RPR-I/2006 dated 30.11.2006 of Commissioner (Appeals)].

Date of Hearing:23.01.09

For approval and signature:
Hon'ble Mr.RAKESH KUMAR, MEMBER (TECHNICAL)

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?	

C.C.E., Raipur

...Appellant
[Represented by Shri S.K.Bhaskar, DR]

Vs.

M/s. Bharat Aluminium Co. Ltd. ... Respondent
[Represented by Shri Ravi Raghavan, Advocate]

Coram: Hon'ble Mr.RAKESH KUMAR, MEMBER (TECHNICAL)

Final ORDER NO.172/09-SM (BR) DATED:23.01.2009

PER: RAKESH KUMAR

This is Revenue's appeal against the impugned order in appeal dated 30.11.06 by which the Commissioner (Appeals) set aside the Asstt. Commissioner's order disallowing the capital goods Modvat Credit in respect of M.S. Rounds and Pig Iron used for repair and maintenance of the plant and machinery. The respondents are engaged in the manufacture of aluminium and aluminium products. M.S. Rounds are used for repair of Anode studs which get eroded during the electrolysis process and pig iron is used for repair of shallow rectangular steel tanks. The Department was of the view that since these items are used only for repair and maintenance of the plant and machinery and since they are not covered by the definition of capital goods, the same are not eligible for Cenvat Credit either as inputs or as capital goods.

2. Heard both the sides.

3. Shri S.K. Bhaskar, the ld. DR reiterating the grounds of appeal pleaded that the M.S. Rounds and pig iron are not eligible for either Cenvat capital goods Cenvat Credit or input credit as they are neither used in or in relation to the manufacture of finished goods nor the same are covered by the definition of 'capital goods' as given in the Cenvat Credit Rules, that these items do not fall under Chapter 82, 84, 85, 90 or 68 of the Central Excise Tariff and they are also not the components,

spares and accessories of the capital goods, that these items do not play any role in functioning of any machinery and that the Tribunal in the case of Vikram Ispat reported in 2004 (175) ELT 146 relying upon its judgement in the case of Jaypee Rewa reported in 2003 (159) ELT 553 has held that only the goods used in any particular activity in the course of the entire process of converting raw-material into finished goods would be held to have been used in the manufacture of the goods, and that the welding electrodes and oxygen gases used in repair & maintenance of plant and machinery cannot be considered as eligible inputs for Cenvat Credit, that the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant (supra) has held that repairs and maintenance of machinery are not normally done when the process of manufacture of goods with such machinery is under way, that goods used for repair and maintenance are not a part of, or integrally connected with the process of manufacture of final product and for this reason the welding electrodes used for repair and maintenance of the plant and machinery cannot be considered to have been used in relation to the manufacture of finished products and hence the same cannot be treated as inputs eligible for Cenvat credit. The learned D.R., therefore, pleaded that pig Iron and M.S. Rounds used in the present case for repair and maintenance of plant and machinery are neither input eligible for Cenvat credit or the same are capital goods eligible for capital goods Cenvat Credit and therefore, the Commissioner (Appeals) has wrongly allowed Cenvat Credit in respect of these items.

5. Shri Ravi Raghavan, ld. Counsel for the respondent pleaded that the M.S. Rounds and pig iron, used for repair and maintenance of plant and machinery are eligible for Cenvat Credit. In this regard, he placed reliance on the judgement of Hon'ble Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Ltd. reported in 2007 (214) ELT 510 where it was held that MS/SS Plates used in workshop meant for repair and maintenance of machinery are eligible for Cenvat as capital goods as well as inputs, that this judgement of Hon'ble High Court has been upheld by Hon'ble Supreme Court judgement reported in 2007 (214) ELT A 115 (SC), as the Hon'ble Supreme Court has dismissed the S.L.P. filed by the Govt. against the above mentioned judgement of Hon'ble Rajasthan High Court, that the Tribunal in the case of Steel Authority of India Ltd vs. CCE reported in 2008 (227) ELT 265 has also taken the same view holding that forged products, blooms, billets, Chequered

Plates, GC Sheets, Flats and M.S. plates used in the manufacture of parts of capital goods in the factory which are further used in the factory alongwith other capital goods, are eligible for Cenvat Credit, and that this Tribunal in the case of Rosa Sugar Works Vs. Commissioner of Central Excise, Kanpur reported in 2001 (131) ELT 89 (Tri. Del.) has also taken the view that plates, bars and rods used for repairing damaged parts of the machinery, storage tank, boilers etc. are capital goods eligible for Cenvat Credit and that in view of this, the Commissioner (Appeals) has rightly allowed Cenvat Credit in respect of these two items.

6. I have carefully considered the submissions from both the sides. The point of dispute in this case is as to whether the pig iron and M.S. Rounds used for repair and maintenance of the plant and machinery are eligible for Cenvat Credit or not. While the Tribunal in the case of Jaypee Rewa Plant (Supra) and Vikram Spat (supra) in respect of use of welding electrodes and oxygen gases for repairs and maintenance of the plant and machinery has held that the same are not eligible for Cenvat Credit as inputs, I find that Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. (Supra) has held that MS/SS plates used in the workshop for repairs and

maintenance of the machinery are eligible for capital goods Cenvat Credit as these goods are necessary for running of the plant and machinery. The SLP filed by the Govt against this judgement of the Hon'ble Rajasthan High Court has been dismissed by the Hon'ble Supreme Court. In view of this, I hold that the MS Rounds and pig iron used for repair & maintenance of plant and machinery are eligible for Cenvat credit. I find that Hon'ble Rajasthan High Court in another judgement in the case of Hindustan Zinc Ltd. has held that welding electrodes used for repair and maintenance of plant and machinery are eligible for Cenvat Credit. In view of this, I hold that the M.S. Rounds and pig Iron used for repair and maintenance of plant and machinery are eligible for Cenvat credit. I therefore, find that there is no infirmity in the impugned order. The Revenue's appeal is dismissed.

7. The Cross Objection filed by the respondent also stands disposed off.

[Pronounced in the open Court during the course of hearing]

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita