

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/174 /2009 – SM[BR] E/ STAY/ 181/2009 –SM[BR]

Date 30/03/2009

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

To :
M/S ROSA SUGAR WORKS,
ROSA DISTT. SHAHJHANPUR.
M/S ROSA SUGAR WORKS,

C.C.E. LUCKNOW

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 271/ 2009 –SM[BR]&S/100/2009** dated 16.3.2009 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. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

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 Publications (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 Puniabi Bagh, New Delhi - 110026

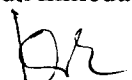
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

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 & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – III

**E/STAY No. 181/09-SM IN &
EXCISE APPEAL NO. 174 OF 2009-SM**

[Arising out of Order-in-Appeal No. 101-CE/LKO/2008 dated 30.9/7.10.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Lucknow]

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Y-N

M/s. Rosa Sugar Works

Appellant

Vs.

CCE, Lucknow

Respondent

Appearance:

Shri Atul Gupta, C.S. for the appellant;
Shri R.K. Saini, D.R. for the Revenue;

Coram:

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

Date of hearing/decision: 16th March, 2009

Stay order No. 100/09-SM (BR)
FINAL ORDER NO. 271/09-SM (BR) dated 16.3.09

Per P.K. Das:

The issue involved in this case is in narrow compass and, therefore, after granting stay the appeal itself is taken up for hearing.

2. After hearing both sides and on perusal of the records it is seen that credit was denied on Welding Electrodes for the period July, 2003 to August, 2003 used for repair and maintenance of plant and machinery. Learned Advocate submits that the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. vs. UOI, reported in 2008 (87) RLT 563 (SC) has held that Welding Electrodes used for repair and maintenance of plant and machinery is eligible for Cenvat Credit. He further submits that the Tribunal following the decision of the Hon'ble Rajasthan High Court has allowed credit on Welding Electrodes in the following cases:-

(a) Kisan Coop. Sugar Factory Ltd. vs. CCE, Meerut – 2009 (90) RLT 70 (CESTAT-Del.)

(b) Ganga Kisan Sehkari Chini Mills vs. CCE, Meerut – Final Order No. 107/09-SM Br. Dated 20.1.2009

3. In view of the decision of the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) denial of credit on Welding Electrodes is not sustainable. Accordingly, the impugned order is set

aside. Appeal is allowed with consequential relief. Stay petition is also disposed of.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK