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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 06/05/2009

Appeal No. E/1478/2007 – SM[BR]

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

To :
M/S DCM SHRIRAM CONSOLIDATED LTD.
SHRI RAM NAGAR, KOTA.

Appellant

M/S DCM SHRIRAM CONSOLIDATED LTD.

Vs

Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No 353 / 2009 –SM[BR]**. dated 27.4.2009 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
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   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 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-III**

**Date of hearing/decision:27.4.2009**

**Central Excise Appeal No.1478 of 2007**

Arising out of the order in appeal No.71 (GRM) CE/JPR-I/2007 dated 19.3.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | No |
| 2 | Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the Order? | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities? | Yes |

Appellant | | Respondent
---|---|---
M/s DCM Shriram Consolidated Limited | vs. | C.C.E., Jaipur I

Appearance:

Shri B.L. Narasimhan, Advocate with Shri Ravi Raghvan, Advocate for the appellant/applicant and Shri R.K. Saini, Authorised Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final ~~Oral~~ Order No. 353/09-SM(BR)

Per M. Veeraiyan:

A very short point is involved in this appeal. The point is whether grinding media used in ball mill of a cement plant can be treated as input or capital goods. The original authority held that the same as input after relying on the decision of the Larger Bench of the Tribunal in the case of C.C.E., Bolpur vs. Durgapur Cement Works reported in 1997 (90) ELT 197 (Tri.) and allowed the credit. However, on appeal by the Department, Commissioner (Appeals) held that the said item as essential accessories for the process of grinding without which the ball mill is of no use. Therefore, he held that the same is capital goods and the implication is that they are not eligible for the Cenvat credit at one go. On capital goods only upto 50% of the credit can be taken in the first year and the balance only in subsequent years.

2. Both sides agree that the very same item namely grinding media has been held by the Larger Bench as input. The relevant portion of the decision of the Larger Bench of the Tribunal is reproduced below:

> ***"10. There is no controversy before us in regard to the aspect that Steel Balls (Grinding Media) used in Ball Mills are "inputs" used in or in relation to manufacture of Cement (the final product) within the meaning of Rule 57A of the Rules. Ball Mill is the machinery used for manufacture of Cement. Ball Mill can of course be switched on without Steel balls but it cannot perform the process of grinding without using Steel Balls in the machine. Steel balls are most essential for the process. One of manufacturing process is grinding. Grinding takes place on account of the impact of Steel Balls on the raw materials. A part of the Steel Balls on account of severe impact gets damaged and particles and pieces of Steel balls are mixed together with the powdered raw materials and become part of the final product; this takes place though not intended. However, for this reason Steel balls cannot be regarded as raw materials, though they are, to a small extent, consumed and enter the final product. It can be safely held that they are used in or at any rate, in relation to the manufacture of the final product and hence "inputs".***
>
> ***11. Ball machine without Steel Balls placed in it is a Machine complete in itself; it is not an incomplete Machine. Just as any complete Machine may require to be fed consumables or other goods for it to perform its functions, Ball Machine requires Steel balls to be placed inside the drum in order that it performs its functions. That does not make Steel balls components or parts of Ball Mill. They are not accessories in the sense that they are additional attachments or otherwise enhance the performance or utility of Ball Mill. They are goods the use of which in Ball Mill is essential for the latter's performance. Light is also thrown by the Note in HSN that Balls are classified according to their constituent material and not as parts. It must also be noticed that Steel balls are not attached or fixed to the Ball Mill. As pointed out, Ball Mill will commence operation and drum will start rolling or moving, but grinding will take place only if Steel Balls are present. Thus Steel Balls cannot be regarded as parts of Ball Mill. They are not, in or by themselves, machine or machinery or appliance or tools or the like as they are not self-contained or complete units or group or assembly of parts as explained in Union Carbide India Ltd. v. Collector of Central Excise - 1996 (86) E.L.T. 613 (Tribunal). They are also not part of such goods as indicated already. Even assuming Steel Balls are part of machine or machinery, parts are not covered by exclusion Clause (i) of the Explanation to Rule 57A of the Rules as held in Union Carbide India Ltd. case, 1996 (86) E.L.T. 613 (Tribunal). It is thus clear that Steel Balls are "inputs" and not excluded by exclusion Clause (i) and, therefore, Modvat credit is admissible. The reasoning in Electrosteel Castings Ltd., 1989 (43) E.L.T. 305 is, with respect, not correct. The distinction drawn in Magnetix (India) Ltd. case, 1996 (86) E.L.T. 317 (Tribunal) with reference to the decision in Electrosteel Casting Ltd. case, 1989 (43) E.L.T. 305 (Tribunal) is with respect, not correct. The decision in M/s. Associated Cement Co. Ltd. (Appeal No. E/216/91) is per incurium inasmuch as the earlier decisions and***

***relevant aspects and technical literature were not brought to the notice of the Bench which decided the appeal."***

3. As the above issue is settled by the Larger Bench and I have not been shown any decision of a higher forum reversing the said decision, I hold that it was not proper on the part of the Commissioner (Appeals) to disregard the said decision and come to a different conclusion. Therefore, the order of the Commissioner (Appeals) is set aside and the appeal of the party is allowed with consequential relief.

(M. Veeraiyan)
Member (Technical)

scd/