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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/960 /2007 – SM[BR] Date 19/05/2009

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

To :
M/S DOIWALA SUGAR COMPANY LTD.
V.P.O-DOIWALA, DISTT. DEHRADUN
(UTTARANCHAL)
M/S DOIWALA SUGAR COMPANY LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 380 / 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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.AALOK ARORA,ADV
82-MISSION COMPOUND,SAHARANPUR (U.P.)
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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/960/07-SM

[Arising out of Order-in-Appeal No.279-CE/MRT-I/2006 dt.13.12.06 passed by the Commissioner(Appeals), Meerut-I)

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 would 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 : Department Authorities:

M/s. Doiwala Sugar Co. Ltd. Appellant

Versus

CCE, Meerut-I Respondent

Appearance
Shri Alok Arora, Adv. For Appellant
Sh. S.Gautam, Authorised Departmental Representative, DR for Respondent

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

Date of decision: 27.4.09
Final Order No. 380/09-SM(DR)

Per Rakesh Kumar:

The issue involved in this case is as to whether welding electrodes used for repairs and maintenance of the machinery are eligible for Cenvat credit.

2. Heard both the sides.

2.1 Appearing for the Appellant Shri Alok Arora, Advocate, Ld. Counsel pleaded that the issue involved in this case is covered by the Hon'ble Rajasthan High Court judgement in the case of Hindustan Zinc Ltd. vs UOI reported in 2008(228)ELT.517 which has been followed by the Tribunal in the case of Ganga Kisan Sahkari Chini Mills Ltd. vs CCE, Meerut-I(Final order No.107/09-SM dt.20.1.09) and also in the case of Kisan Cooperative Sugar Factory Ltd. vs CCE, Meerut-I reported in 2009(90)RLT.17(CESTAT-Del.). In view of this he pleaded that the impugned order denying Cenvat credit in respect of welding electrodes and upholding the penalty on the Appellant is not sustainable.

2.2 Shri S.Gautam, Ld. DR defending the impugned order pleaded that the welding electrodes/~~welding rods~~ are not eligible for Cenvat credit either capital goods or inputs. In this regard, he placed reliance Larger Bench judgment of the Tribunal in the case of Steel Authority of India vs CCE, Ranchi reported in 2008(222)ELT.233, SLP against which has been dismissed by the Hon'ble Supreme Court.

3. I have carefully considered the submissions from both the sides and perused the records. I find that the issue involved in this case is squarely covered by the decision of Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd.(supra). Though DR pleads that in the case of Steel Authority of India vs CCE, Tribunal has taken a contrary view and SLP against the judgment was dismissed by the Hon'ble Supreme Court, I find that the Hon'ble Supreme Court's order is only a summary dismissal of SLP which does not lay down any law. Tribunal in the case of Asstt. Engineer(Civil) vs CCE, Raipur reported in 2008(232)ELT.628 has held that it is well settled that summary dismissal of SLP/Civil Appeal by the Supreme Coure does not amount to affirmation of the judgment/order of the Court/Tribunal appealed against, on merit and it merely means that Supreme Court has declined to interfere in the matter. In view of these circumstances, following the decision Hon'ble Rajasthan High Court, I hold that the impugned order is not sustainable. The same is set aside and the appeal is allowed with consequential relief, if any.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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