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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/1524/2004 – SM[BR] Date 21/05/2009

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

To :
HINDUSTAN ZINC LTD.
"Yashad Bhawan"
UDAIPUR-313001 (Raj)
HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 447 / 2009 –SM[BR] dated 29.4.2009

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.
2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI

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
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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/1524/04-SM

[Arising out of Order-in-Appeal No.552(RM)CE/JPR-II/2003 dt.25.11.03 passed by the Commissioner(Appeals), Jaipur)

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. Hindustan Zinc Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance
Shri Ravi Raghvan, Adv., for Appellant
Sh. R.K.Saini, Authorised Departmental Representative, DR for Respondent

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

Date of decision: 29.4.09
Final Order No. 447/09-SM (BR)

Per Rakesh Kumar:

This appeal has been taken up for denovo decision in pursuance of order dt.22.9.08 of Hon'ble Rajasthan High Court in respect of Central Excise Appeal No.1/06 filed by the Appellant. A SCN dt.1.8.95 was issued to the Appellant for denying Modvat credit on a number of tiems. The Asstt. Commissioner vide order-in-original dt.17.11.97 disallowed Modvat credit amounting to Rs.12,64,751/- out of which Modvat credit amounting to Rs.1,58,954/- was denied in respect of Load Cells, Spares for Pump and Liner Plates for Bins for discrepancy in respect of their description as given in respective invoice and as given in the declaration filed under Rule 57T and Cenvat credit amounting to Rs.3,10,536/- was denied in respect of Plates, Angles and Channels on the ground that the same are not capital goods. On appeal by the Appellant, the Commissioner(Appeals) vide order-in-appeal dt.25.11.03 allowed Modvat credit in respect of all the items except the Modvat credit amounting to Rs.3,10,536/- in respect of Plates, Angles and Channels and Modvat credit amounting to Rs.1,58,954/- in respect of Load Cells. The Appellant filed an appeal before the Tribunal against this order of the Commissioner(Appeals) and the Tribunal vide Final order No.A/949/05 dt.2.6.05 dismissed the appeal. Against this order of the Tribunal, the Appellant filed an appeal before Hon'ble Rajasthan High Court and Hon'ble High Court vide order dt.22.9.08 remanded the matter to the Tribunal for denovo decision after considering the Appellant's contention that the Plates, Angles and Channels are used as spares of the machinery and eligible for Modvat credit. Accordingly, this appeal has been taken up for denovo consideration.

2. Heard both sides.

2.1 Sh. Ravi Raghvan, Advocate, Ld. Counsel for the Appellant made the following submissions:

2.1.1 So far as Load Cells , Spare of Pumps and liner plates are concerned, in respect of these items of Modvat credit amounting to Rs.1,58,954/- has been denied, on the ground that in the declaration filed under Rule 57T , their description has not been correctly mentioned. In this regard, he pleaded that there is no dispute about the fact that these items have been received and used and just because discrepancy between the description in the invoices and description as given in the declarations filed under Rule 57T, Modvat credit cannot be denied. In this regard, he relied upon the judgment of Hon'ble Punjab & Haryana High Court in the case of CCE, Delhi-III vs A.B.Card Clothing(P) Ltd. reported in 2008(222)ELT.359(P&H) and the judgment of the Tribunal in the case of JBM Tools Ltd. vs CCE, Pune reported in 2002(144)ELT.561 wherein it was held that when the capital goods have been received in the factory and used for manufacture of finished products, Modvat credit cannot be found just because the declaration under Rule 57 have not been filed. In this case and only objection is that there is discrepancy in the description as given in the declaration filed under Rule 57T and description as given in the invoices. In view of this, he pleaded that there is no ground for denial of Modvat credit in these items.

2.1.2 So far as plates, angles and channels are concerned, in respect of which Modvat credit amounting to Rs.3,10,536/-, has been denied, the plea of Shri Raghvan is that the Appellant from the very beginning have been pleading that these items are very much part of the machinery. He pointed out to the reply to SCN wherein it has been clearly mentioned that the pressure hood of Sintering machine and Condenser & furnace roof etc. are made out of MS Plates, Beams & Channels and thus these are basically being used as a spares of above machines. He, therefore, pleaded that in view of this, there is no justification for denial of the Modvat credit. He also relied upon the judgment of Hon'ble Punjab & Haryana High Court in the case of CCE vs Pioneer Agro Extracts Ltd. reported in 2008(230)ELT.597(P&H) wherein with reference to the definition of the capital goods in Rule 57Q of Central Excise Rules,1944, it was held that channels, angles, joints, squares, equal angles of iron and steel which are used for installation of batch vessel, are part of the machinery and hence the same are capital goods. Another judgment relied upon by him was the judgment of Hon'ble Rajasthan High Court in the case of UOI vs Hindustan Zinc Ltd. reported in 2007(214)ELT.510 wherein it was held that MS/SS plates used in the workshop meant for repairs and maintenance of the machinery, which is used in the manufacture of final product are covered by the definition of capital goods and hence are eligible for Modvat credit and this judgment has been upheld by the Hon'ble Supreme Court reported in 2007(214)ELT.A115(SC).

2.2 Ld. DR reiterating the Commissioner(Appeals)'s findings pleaded that the Cenvat credit in respect of these items has been rightly denied as while in respect of the load cells, spares for pumps and liner plates, proper declaration under Rule 57T has not been filed, the Plates and Angles and Beams/channels are not parts and accessories of the machinery installed for manufacture of the finished goods.

3. I have carefully considered the submissions from both the sides and perused the records. The first point of dispute is as to whether the load cells, spares for pumps and liner plates are eligible for capital goods Modvat credit. The Deptt.'s objection is that no proper declaration in respect of these items has been filed under Rule 57T as there is discrepancy between description of these items, as given in the invoice and the description as given in Rule 57T declaration. I find that there is no dispute about the receipt of these items and their use for the intended purposes. In view of this, as per the judgments of Hon'ble Punjab & Haryana High Court in the case of CCE vs A.B.Card Clothing(P) Ltd. and the judgment of the Tribunal in the case of J.B.M. Tools Ltd.. vs CCE, Pune(supra), the Modvat credit cannot be denied just because their description has not been correctly mentioned in Rule 57T declaration. In view of this, the Appellants are eligible for Modvat credit amounting to Rs.1,58,954/- in respect of load cells, spares for pump and liner plates.

4. As regards the M.S.Plates, Angles, Pumps etc., the Appellant's plea is that the same are part of Sintering machine. On going through the order-in-original, I find that this has not been denied as the Asstt.

Commissioner mentions that the plates, angles and channels and pipes are used as structural items for manufacture of hood and roof, which are spare parts of sintering machine. The Asstt. Commissioner also observed that in the instant case, the plates, angles and channels/beams are used as input rather than capital goods. If this is so, it is not understood as to how the Modvat credit can be denied in respect of these items. Moreover Hon'ble Punjab & Haryana High Court in case of CCE, Jalandhar vs Pioneer Agro Extracts Ltd.(supra), with regard to old Rule 57Q of Central Excise Rules,1944, has held that channels, angles, joists, squares of iron as steel; which are used for installation of ~~beach~~ batch vessel, are essential parts, of plant and machinery and following the ratio of this judgment, in this case also it has to be held that the plates, angles and channels used for making hood and roof of Sintering machine are parts of plant and machinery and hence capital goods. In view of this, I hold that there is no ground for denial the credit of Rs.310536/- in respect of plates, angles and channels.

6. In view of the above discussion, the impugned order denying Modvat credit in respect of plates, angles, channels and load cells, spare for pumps and liner plates is not sustainable. The same is set aside and the appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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