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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/20 /2009 – SM[BR] E/ STAY / 30 / 2009 –SM[BR]   Date 26/05/2009

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

To :
M/S GOBIND SUGAR MILLS LTD.
AIRA ESTATE, KHERI (U.P.)

M/S GOBIND SUGAR MILLS LTD.   Appellant
Vs
C.C.E. LUCKNOW   Respondent

am directed to transmit herewith a certified copy of **Final order No**. 476 / 2009-SM[BR]&S/243/2009 dated 21.4.2009

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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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)
16. Office Copy
17. 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/30/2009-SM IN & EXCISE APPEAL NO. 20 OF 2009-SM

[Arising out of Order-in-Appeal No. 100-CE/LKO/2008 dated 30.9..2008 passed by the Commissioner (Appeals), 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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Gobind Sugar Mills Ltd., Appellant

Vs.

CCE, Lucknow Respondent

Appearance:

Shri Rajesh Chhibber, Advocate for the appellant;
Shri S.K. Bhaskar, D.R. for the Revenue;

Coram:

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

Date of hearing/decision: 21st April, 2009

FINAL ORDER NO. 476/09 SM (BR) **dated** 21/4/09

STAY ORDER - 243/2009 SM(BR)

Per P.K. Das:

After hearing both the sides and on perusal of the records, I find that the issue involved is in narrow compass and, therefore, after granting stay, appeal itself is being taken up for hearing.

2. In this case credit was denied on Welding Electrodes. It is revealed from the impugned order that during the period April, 2006 to February, 2007 the appellants availed credit to the tune of Rs. 4,13,017 on Welding Electrodes used in maintenance and repair of plant and machinery installed in the factory. The original authority denied the credit and imposed penalty of equal amount. The Commissioner (Appeals) upheld the adjudication order.

3. Learned Advocate submits that the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. vs. UOI, reported in 2008 (87) RLT (Raj.) held that Welding Electrodes used for maintenance and repair of plant and machinery is eligible for credit. On the other hand, learned D.R. submits that the Tribunal in the case of SAIL vs. CCE, Ranchi, reported in 2008 (84) RLT 37 denied the credit on Welding Electrodes which was upheld by the Hon'ble Supreme Court, as reported in 2008 (229) ELT 127 (SC). In reply, learned Advocate submits that the Tribunal in the case of General Manager, Oswal Overseas Ltd. vs. CCE,

Meerut, reported in 2009 (91) RLT 577 (CESTAT-Del.) after considering the decision of the Tribunal in the case of SAIL allowed the credit on Welding Electrodes.

4. After hearing both sides, I find that the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) allowed the credit on Welding Electrodes. It is observed that the Tribunal in the case of General Manager Oswal Overseas Ltd. (supra), after considering the decision of the Tribunal in the case of SAIL allowed the credit on Welding Electrodes. The relevant portion of the said decision is reproduced below:-

"I have carefully considered the submissions from both the sides. The first point of dispute is regarding eligibility of welding electrodes used for maintenance and repair of sugar mills for Cenvat credit. On this issue, while on one hand there is judgment of the Tribunal in the case of SAIL vs CCE, Ranchi (supra), SLP against which has been dismissed by the Supreme Court, on the other hand is the judgment of the Hon'ble High Court of Rajasthan in the case of Hindustan Zinc Ltd. vs. UOI, which is a detailed judgment and in which the Hon'ble High Court has held the welding electrodes used for repairs & maintenance of the machinery and plant would be eligible for Cenvat credit both as input as well as capital goods. I agree with the Appellant that dismissal of SLP by Supreme Court against Tribunal's judgment in the case of SAIL vs

CCE, Ranchi does not lay down any law, as it is only summary dismissal and in this regard, I am supported by the judgment of this Tribunal in the case of Asst. Engg. (Civil) P.C.C. Poles Factory & Others vs. CCE, Raipur reported in 2008 (89) RLT 216 wherein the Larger Bench of the Tribunal has clearly held that it is well settled that summary dismissal of SLP/Civil appeal by Supreme Court does not amount to affirmation of the judgment or the order of the Court/Tribunal appealed against on merit and merely means the Supreme Court has declined to interfere in the matter. I also find that this view is supported by the Hon'ble Supreme Court in the case of Kunhayammed vs. State of Kerala (supra). Therefore, I hold that Cenvat credit is available in respect of welding electrodes used for maintenance and repairs of the plant and machinery."

5. In view of the above discussion, I find that Welding Electrodes used for repair & maintenance of plant and machinery is eligible for credit. Accordingly, impugned order is set aside. Appeal is allowed. Stay petition is also disposed of.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK