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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/1977 – 1978 / 2007 –SM[BR] Date 02/06/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. DWARIKESH SUGAR INDS. LTD.
2. DWARIKESH SUGAR INDS. LTD.

DWARIKESHPURAM, DISTT. BIJNOR

246762

DWARIKESH SUGAR INDS. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 508 -509 / 2009 –SM[BR] dated 20.5.2009

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 II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

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 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

COURT – III

EXCISE APPEAL NO. 1977-78 OF 2007-SM

[Arising out of Order-in-Appeal No. 88-89-CE/MRT-II/07 dated 12.4.07 passed by the Commissioner (Appeals), Central Excise, Meerut-II]

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. Dwarikesh Sugar Industries Ltd., Appellants

Vs.

CCE, Meerut-II Respondent

Appearance:

Shri Mayank Garg, Advocate for the appellants;
Shri Sansar Chand, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 20th May, 2009

FINAL ORDER NO. 508-509/09-SM(BR) **dated** 20.5.09

Per P.K. Das:

Heard both sides and perused the records.

2. The applicants filed these appeals against denial of credit on Welding Electrodes, Asbestos packing, Angle, Shapes, HDPE pipes, Sections and Quick Setting Cement.

3. After hearing both sides and on perusal of the records, the detailed discussions are given below:-

(a) **Welding Electrodes** - It is seen from the impugned order that Welding Electrodes were used for repair and maintenance of plant and machinery and hard facing of various parts of machinery. Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. vs. UOI, reported in 2008 (87) RLT 563 (Raj.) held that Welding Electrodes used for repair and maintenance of plant and machinery are eligible for Cenvat Credit. The Tribunal in the case of G.M. Oswal Overseas vs. CCE, reported in 2009 (1) RLT 577 (CESTAT-Del.) following the decision of the Hon'ble Rajasthan High Court allowed credit on Welding Electrodes. In view of that, denial of credit on Welding Electrodes is not sustainable.

(b) **Asbestos Packing** – It is revealed from the impugned order that these items were used as packing material at various stations in sugar mill plant in jointing the various types of pipes to make them leak-proof. Besides, they are used as essential material for jointing purposes in boilers, quads, pans, pumps, etc. The Tribunal in the case of KCP Sugar & Industreis Ltd. vs CCE, Guntur, reported in 2004 (178) ELT 275 (Tri.-Bang.) held that Asbestos packing/ compressed asbestos fibres used for preventing leakage in pipes connected with flanges to transfer cane juice from one station to another in processing plant in sugar mill is eligible for Cenvat Credit. Hence, credit on Asbestos packing is admissible.

(c) **Angle & Shapes Section** – On perusal of the impugned order it is seen that the appellants contended before the Commissioner (Appeals) that it was wrongly alleged in the Show Cause Notice that these items are as shape, section & angles but these items are actually seamless pipes, flange, elbow and pipe support clamps, etc. covered within the definition of "pipe, tubes and fitting thereof." Commissioner (Appeals) observed that the appellants have not submitted any evidence in support of their contention. So, it is required to be examined by the original authority.

(d) **Quick Setting Cement** – The appellants contended that these items are Refractory material used for boiler. Learned D.R.

submits that Quick Setting Cement is classifiable under heading 3424 cannot be classifiable under Refractory cement. The learned D.R. also contended that Refractory cement is classifiable under Chapter 38 of the Schedule to the Central Excise Tariff Act, 1985. It is seen from the order of the Commissioner (Appeals) that the appellants have been using this material in place of Refractory Cement. Sub-clause (v) of Clause (A) of Rule 2 of Cenvat Credit Rules, 2004 capital goods defines "Refractory and Refractory maerial". The Tribunal in the case of CCE, Bangalore vs. Amitronics (P) Ltd., reported in 2002 (15) ELT 426 (Tri.-Bang.) held that Ceramic plates are covered under description of 'refractory material' or 'spares and accessories of furnaces and eligible for Modvat credit. In the present case, it appears that Quick Setting Cement was used as Refractory material for boiler. Definition of capital goods under Rule 2 of Rules does not indicate the particular heading/sub-heading. Therefore, Quick Setting Cement was used as Refractory material is eligible for credit. Accordingly, credit on Quick Setting Cement cannot be denied.

4. In view of the above discussion, credit on Welding Electrodes, Asbestos Packing and Quick Setting Cement are allowed. The denial of credit on Angle, Shapes and sections are set aside and matter is remanded to the original authority to decide afresh after examining the documents.

The appellants are directed to produce documents before the original authority in de novo proceedings. Both the appeals are disposed of in above terms.

Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK