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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/2280/2007 – SM[BR] Date 02/07/2009

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

To.:
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR Appellant

Vs

M/S BHARAT ALUMINIUM CO. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 641 / 2009 –SM[BR] dated 11.5.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S BHARAT ALUMINIUM CO. LTD.
   BALCO TOWNSHIP, KORBA, CG
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN 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
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2280 OF 2007-SM

[Arising out of Order-in-Appeal No. 114/RPR-I/2007 dated 10.5.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Raipur]

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

CCE, Raipur — Appellant

Vs.

M/s. Bharat Aluminium Co. Ltd. — Respondents

Appearance:

Shri M.M. Singh, D.R. for the Revenue;
Ms. Nupur Maheshwari, Advocate for the respondents

Coram:

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

Date of hearing/decision: 11th May, 2009

FINAL ORDER NO. 641/2009 SM(BR) **dated** ________

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal No. 114/RPR-I/2007 dated 10.5.2007 passed by the Commissioner (Appeals), Raipur.

2. Learned D.R. submits that Commissioner (Appeals) erroneously allowed the credit on Pig Iron used for repair and maintenance purpose. He reiterates the grounds of appeal.

3. Learned Advocate on behalf of the Respondents submits that Pig Iron was used for repair and maintenance of plant and machinery. She submits that the Tribunal in their own case vide Final Order No. 172/2009-SM(BR) dated 23.1.2009 rejected the appeal filed by the Revenue. Relevant portion of the Tribunal's Final Order dated 23.1.2009 is reproduced below:-

"I have carefully considered the submissions from both the sides. The point of dispute in this case is as to whether the pig iron and M.S. Rounds used for repair and maintenance of the plant and machinery are eligible for Cenvat Credit or not. While the Tribunal in the case of Jaypee Rewa Plant (supra) and Vikram Spat (supra) in respect of use of welding electrodes and oxygen gases for repairs and maintenance of the plant and machinery has held that the same are not eligible for Cenvat Credit as inputs, I find that Hon'ble Rajasthan High Court in the case of

Union of India Vs. Hindustan Zinc Ltd. (Supra) has held that MS/SS plates used in the workshop for repairs and maintenance of the machinery are eligible for capital goods Cenvat Credit as these goods are necessary for running of the plant and machinery. The SLP filed by the Govt against this judgement of the Hon'ble Rajasthan High Court has been dismissed by the Hon'ble Supreme Court. In view of this, I hold that the MS Rounds and pig iron used for repair & maintenance of plant and machinery are eligible for Cenvat credit. I find that Hon'ble Rajasthan High Court in another judgement in the case of Hindustan Zinc Ltd. has held that welding electrodes used for repair and maintenance of plant and machinery are eligible for Cenvat Credit. In view of this, I hold that the M.S. Rounds and pig iron used for repair and maintenance of plant and machinery are eligible for Cenvat credit. I therefore, find that there is no infirmity in the impugned order. The Revenue's appeal is dismissed."

4. In view of the above decision of the Tribunal in respondent's own case, I do not find any infirmity in the impugned order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK