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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/ 2367 / 2007 -SM[BR] Date 08/07/2009

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

To :
M/S SARJOO SAHKARI CHINI MILLS LTD.
BELRAYAN, DISTT. LAKHIMPUR KHERI (UP)

M/S SARJOO SAHKARI CHINI MILLS LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 664 / 2009 -SM[BR] dated 23.6.2009 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.VINAY GARG
   C-253, 1ST FLOOR DEFENCE COLONY, 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)
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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2367 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 49-CE/LKO/2007 dated 23-24/05/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

For Approval and signature :
Hon'ble Shri 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 Sarjoo Sahkari Chini Mills Ltd. Appellant

Versus

CCE, Lucknow Respondent

Appearance

Shri Mayank Garg, Advocate – for the appellant.

Shri S.N. Srivastava, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 23/06/2009.

Final Order No. 664/2009-SM(BR) Dated : 23.6.2009

Per. Rakesh Kumar :-

This is an appeal against Order-in-Appeal No. 49/CE/LKO/07 dated 24/5/07 passed by CCE (Appeals), Lucknow, upholding the Cenvat credit demand amounting to Rs. 34,774/- in respect of welding electrodes and M.S. Plates. The Department has denied the Cenvat credit in respect of the welding electrodes and M.S. Plates used for maintenance and repairs of plant and machinery on the ground they are not covered either by the definition of input or by the definition of capital goods.

2. Heard both the sides.

2.1 Shri Mayank Garg, Advocate, the learned Counsel for the appellant pleaded that as noted by the Commissioner (Appeal) in para '6' of his order, the issue involved in this case is as to whether welding electrodes and M.S. plates used for repair and upkeep of existing plant and machinery are eligible for Cenvat credit as components and accessories of the capital goods, that it is very clear from the records that these items are used for maintenance and repairs of plant and machinery and that the same would be eligible for Cenvat credit in view of the judgments of Hon'ble Rajasthan High Court in the case of **Union of India vs. Hindustan Zinc Ltd.** reported in **2007 (214) E.L.T. 510 (Raj.)**, wherein Hon'ble High Court held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product would be eligible for Modvat credit and in the case of **Hindustan Zinc Ltd. vs. Union of India** reported in **2008 (228) E.L.T. 517 (Raj.)**, wherein Hon'ble High Court held that the welding electrodes used for repair and maintenance of plant and machinery would be eligible for Cenvat credit as capital goods as well as inputs. In view of this, he pleaded that the impugned order is not correct.

2.2 Shri S.N. Srivastava, the learned Departmental Representative, pointing to fourth para of the show cause notice pleaded that these items are used not only in repair and maintenance of the plant and machinery but also in civil construction work, that to the extent these items are used for the civil construction work, the same would not be eligible for Cenvat credit even as per decision of the Hon'ble Rajasthan High Court and in view of this, the matter must be remanded for denovo examination on this point.

3. I have carefully considered the submissions from both the sides and perused the records. The only point of dispute in this case is as to whether the welding electrodes and M.S. plates are eligible for Cenvat credit or not. I find that while the show cause notice mentions that these two items are used either for civil construction work or for repair and maintenance of plant and machinery, the order-in-original dated 30/10/06 as well as order-in-appeal mention that these items are used for repair and maintenance of plant and machinery. In view of this and also in view of the fact that only a small amount is involved, I do not see any reason to remand this matter. I also find that Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. vs. Union of India (supra) has held that welding electrodes used for repair and maintenance of plant and machinery are eligible for Cenvat credit as capital goods as well as inputs and similarly Hon'ble High Court decision in the case of Union of India vs.

Hindustan Zinc Ltd. (supra) has held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product would be eligible for Cenvat credit as the same for necessary for running of plant and upkeep the machinery directly involved in the finished product. Following the above mentioned decisions of the Rajasthan High Court, I hold that the impugned order of the Commissioner (Appeals) is not correct. Hence the same is set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK