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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/2620/2007 – SM[BR] Date 06/10/2009

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant
Vs
M/S RAMGARH CHINI MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1175 / 2009 –SM[BR] dated 22.9.2009 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 RAMGARH CHINI MILLS
RAMGARH, SITAPUR.

2. Adv. / Consult SHRI SHEKHAR VYAS ADV.
P-13 , SECTOR 12, NOIDA- 201301 [U.P]

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/2620/07-SM

(Arising out of Order-in-Appeal No.28-CE/LKO/07 dt.27.3.07 passed by the Commissioner(Appeals), Lucknow)

CCE, Lucknow — Appellant

Versus

M/s. Ramgarh Chinni Mills — Respondent

Appearance
Sh. Sansar Chand, DR For Appellant

Sh. Shekhar Vyas, Adv. for Respondent

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

Date of Hearing: 22.9.09
Final Order No. 1175/2009-SM(BR)

Per Rakesh Kumar:

In this case the Asstt. Commissioner vide order-in-original dt.29.6.06, while allowing the capital goods Cenvat credit in respect of Bagasse Carrier chain; disallowed the capital goods Cenvat credit in respect of welding electrodes used for repair and maintenance of the machinery and on this basis confirmed Cenvat credit demand of Rs.73,856/- and imposed penalty of Rs.10,000/- under Cenvat Credit Rules,2004. On appeal by the respondent against this order, the Commissioner(Appeals) vide the impugned order-in-appeal No.28-CE/LKO/07 dt.4.5.07 while upholding the Cenvat credit demand, set aside the penalty on the ground that on the question of admissibility of Cenvat credit on welding electrodes, there have been a number of conflicting decisions and the matter involved interpretation of Rules. It is against this order that the Deptt. has filed the appeal. The respondent have also filed Cross Objection which is registered as E/CO/02/08.

2. Heard both the sides.

2.1 Shri Sansar Chand, Ld. DR reiterating the grounds of appeal pleaded that as per the provisions of Rule 15 of Cenvat Credit Rules, penalty is attracted when any Cenvat credit is taken wrongly and since in this case, the respondent has taken Cenvat credit on welding electrodes which was not admissible, some penalty should have been imposed on the respondent and that, therefore, the impugned order setting aside the penalty is not correct. He pleaded that there is no provisions in Rule 15 that in the cases where there is some dispute the penalty can be waived.

2.2 Shri Shekhar Vyas, Advocate, Ld. Counsel for the respondent pleaded that the only issue involved in this matter is as to whether welding electrodes are eligible for Cenvat credit as capital goods or not, that this issue is squarely covered by the judgment of the Hon'ble Rajasthan High Court in the case of Hindustan Zince Ltd. vs UOI reported in 2008(228)ELT.517 wherein it was held that welding electrodes are admissible for Cenvat credit as capital goods as well as as inputs; that this judgment had been followed by this Tribunal in the case of CCE, Raipur vs Bharat Aluminium Co. Ltd. reported in 2009(240)ELT.231(Tri.-Del.) and Mansurpur Sugar Mills vs CCE, Meerut-I reported in 2009(239)ELT.174 and that Hon'ble Madras High Court in the case of CCE, Tiruchirappalli vs India Cement Ltd. reported in 2009(238)ELT.411 has also held that welding electrodes used for repair and maintenance of plant and machinery are covered by the definition of capital goods. He also cited the judgment of Hon'ble Rajasthan High Court in the case of UOI vs Hindustan Zince Ltd. reported in 2007(214)ELT.510(Raj.) wherein it was held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product are the goods, which are necessary for running of plant and up-keeping of machinery directly involved in the manufacturing of product and hence the same are eligible to avail Modvat credit and SLP filed by Govt., this judgment of Hon'ble Rajasthan High Court has been dismissed by Hon'ble Supreme Court by the judgment reported in 2007(214)ELT.115(SC).

3. I have carefully considered the submissions from both the sides and perused the records. The dispute in this case is only with regard to penalty which is linked with the eligibility of welding electrodes for cenvat credit. I find that Hon'ble Rajasthan High Court in the case of Hindustan Zince Ltd. has held that the welding electrodes are eligible for Cenvat credit as capital

goods as well as on inputs. Though recently, Division Bench of the Tribunal in the case of Vikram Cement vs CCE Indore has held that welding electrodes are not eligible for Cenvat credit as inputs, in that judgment the eligibility of welding electrodes for Cenvat credit as capital goods has not been considered and thus on the question of eligibility of welding electrodes for Cenvat credit as capital goods, the only judgment which holds the ~~folds~~ field is Hon'ble Rajasthan High Court's judgment in the case of Hindustan Zinc Ltd. vs UOI(supra). Since on the question of eligibility of welding electrodes for Cenvat credit as capital goods, the judgment of Hon'ble Rajasthan High Court is against the Revenue, in my view this is not a case of imposition of penalty. Therefore, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed. The Cross Objection filed by the respondent also stands disposed of as stated above.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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