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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/2621/2007 – 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 D S C L SUGAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1176 / 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 D S C L SUGAR
RUPAPUR, DISTT. HARDOI (UP)
2. Adv. / Consult SHRI KAPIL VAISH C.A.
B-51, BUTLER PLAZA CIVIL LINES
BAREILLY.

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-110066.
Principal Bench, New Delhi.

E/2621/07-SM

(Arising out of Order-in-Appeal No.51-CE/LKO/07 dt.27.4.07 passed by the Commissioner(Appeals), Lucknow)

CCE, Lucknow Appellant

Versus

M/s. DSCL Sugar Respondent

Appearance
Sh. Sansar Chand, DR For Appellant

Sh. Kapil Vaish, CA for Respondent

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

Date of Hearing: 22.9.09
Final Order No. 1176/2009-SM(BR)

Per Rakesh Kumar:

In this case the Asstt. Commissioner of Central Excise, Sitapur vide order-in-original No.17-AC/STP/Demand/06 dt.31.10.06 confirmed the Cenvat credit demand of Rs.29,110/- alongwith interest by disallowing the Cenvat credit in respect of welding electrodes used for repair and maintenance of the plant and machinery and besides this, imposed penalty of equal amount under provisions of Rule 15 of Cenvat Credit Rules,2004. The respondent had claimed Cenvat credit in respect of welding electrodes used for repair and maintenance of the plant and machinery on the ground that the same are capital goods. On appeal by the respondent against the Asstt. Commissioner's order, the Commissioner(Appeals) vide impugned order-in-appeal No.51-CE/2007 dt.28.5.07 while upholding the Asstt. Commissioner's order with regard to Cenvat credit demand, set aside the penalty on the ground that on the question of admissibility of Cenvat credit on welding electrodes, there are conflicting decisions and as such this matter involved interpretation of Rules. It is against this order that the Revenue has filed the present appeal for imposition of penalty on the ground that in this a case where Cenvat credit has been taken wrongly and therefore Rule 15 of Cenvat Credit Rules,2004 is attracted and this rule prescribe a minimum penalty of Rs.10,000/.

2. Heard both sides.

2.1 Shri Sansar Chand, Ld. DR reiterating the grounds of appeal in the Revenue's appeal pleaded that Cenvat credit is not available in respect of welding electrodes either as capital goods or inputs; that inspite of this, the respondent had taken the Cenvat credit; that since this is a case where Cenvat credit had been taken wrongly and hence in terms of Rule 15 of Cenvat Credit Rules, penalty is imposable which is not exceeding duty of excise on the goods in respect of which any contravention has been committed, or Rs.10,000/- whichever is greater.

2.2 Shri Kapil Vaish, Advocate, Ld. Counsel for the respondent pleaded that Rule 25(1) prescribes only the maximum penalty i.e. upper limit within which the adjudicating authority has discretion *to impose appropriate penalty;* that on this issue, Larger Bench of the Tribunal in the case of CCE, Bhopal vs Rama Wood Craft(P) Ltd. reported in 2008(225)ELT.348(Tri.-LB) has held that the amount of penalty mentioned in Rule 173Q(1) of erstwhile Central Excise Rules,1944 or Rule 25(1) of Central Excise Rules,2002 is the maximum and not the minimum and in that view of settled legal position, there is no merit in the Revenue's appeal .

3. I have carefully considered the submissions from both sides and have perused the records. Since the issue involved in this case is squarely covered by the Larger Bench of the Tribunal wherein it was held that the amount of penalty mentioned in Rule 25(1) of Central Excise Rules,2002 is the maximum and not the minimum, I hold that there is no infirmity in the impugned order. In fact the revenue's contention would have been correct only if in Rule 25(1) in place of the wordings "not exceeding", the words "equal" to had been used. Even on merits, no penalty is imposable as on the issue of eligibility of welding electrodes for Cenvat Credit, there are conflicting judgments and Hon'ble Rajasthan High Court in case of Hindustan Zinc Ltd. vs UOI reported in 2008(228)ELT. 517 has held that welding electrodes are eligible for Cenvat credit as capital goods as well as as inputs. In view of this, the Revenue's appeal is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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