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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/2625/2007 – SM[BR] Date 06/10/2009

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

M/S L H SUGAR FACTORIES LTD.

THE GENERAL MANAGER, L H SUGAR
FACTORES LTD. PILIBHIT

M/S L H SUGAR FACTORIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1177 / 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

   C.C.E. MEERUT II

   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.KAPIL VAISH

   B-51, BUTLER PLAZA, 95, 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/2625/07-SM

(Arising out of Order-in-Appeal No.153-CE/MRT-II/2007 dt.26.7.07 passed by the Commissioner(Appeals), Meerut)

M/s. L.H.Sugar Factories Ltd. Appellant

Versus

CCE, Meerut Respondent

Appearance
Sh. Kapil Vaish, CA For Appellant

Sh. Sansar Chand, DR for Respondent

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

Date of Hearing: 22.9.09
Final Order No. 1177/2009-SM(BR)

Per Rakesh Kumar:

The point of dispute in this case is as to whether the Aluminum Sheets which are used as part of lining of the boiler and have been used for replacing the worn out parts of boiler lining are eligible for Cenvat credit as capital goods. The Asstt. Commissioner vide order-in-original dt.13.2.07 disallowed the Cenvat credit on this item and confirmed Cenvat credit demand of Rs.10837/- alongwith interest and imposed penalty of equal amount on the appellant under Rule 15 of Cenvat Credit Rules,2004. The appellant's appeal to Commissioner(Appeals) was dismissed by Commissioner(Appeals) vide order-in-appeal No.153-CE/MRT-II/07 dt.26.7.07. It is against the order of the Commissioner(Appeals) ~~and~~ that the present appeal has been filed.

2. Heard both sides.

2.1 Shri Kapil Vaish, Chartered Accountant for the appellant pleaded that the aluminum sheets are used for replacing the old and worn out the parts of boiler; that the aluminum sheets are, therefore, spare part of the boiler and hence covered by the definition of capital goods; that as per the Board's circular No.276/110/96 dt.2.12.96 spare parts falling under any chapter heading which is part of the machines specified in the definition of capital goods would be covered by the definition of the capital goods irrespective the charging heading under which it falls; that Hon'ble Rajasthan High Court in the case of UOI vs Hindustan Zinc Ltd. reported in 2007(214)ELT.510(Raj.) has held that MS/SS Plates used in workshop are eligible for Cenvat credit as capital goods and Govt. SLP against this order of Hon'ble Rajasthan High Court was dismissed by the Hon'ble Supreme Court; that same view had earlier been taken by the Tribunal in the case of L.H.Sugar Factories Ltd. vs CCE, Meerut-II reported in 2005(189)ELT.85(Tri.-Del,) wherein it was held that MS Plates used for maintenance of machinery and parts of capital goods are entitled for Cenvat Credit Rules,2004. In view of this, he pleaded that the impugned order is not correct.

2.2 Shri Sansar Chand, Ld. DR, defending the impugned order pleaded that from reading of the impugned order, it is clear that the aluminum sheets cannot be treated as part of the boiler; that it is rightly in the nature of construction and fabrication material and same cannot be treated as part of the capital goods. He also mentioned that they have not given any evidence on this item used of aluminum sheets.

3. I have carefully considered the submissions from both the sides and perused the records. In this case, there is no dispute about the fact that the aluminum sheet is used for repair and maintenance of the boiler, as is evident from the certificate to this effect given by the Chief Engineer and countersigned by the Range Supdt. at page 26 of the appeal memo. When aluminum sheets are used for replacing the old and worn out parts of the boiler, the same has to be treated as part of the boiler and hence capital goods. Hon'ble Rajasthan High Court in the case of UOI vs Hindustan Zinc Ltd.(Supra) has held that MS/SS plates used in workshop meant for repair and maintenance of machinery are eligible for Cenvat credit as capital goods and SLP against this judgment of Hon'ble Rajasthan High Court has been dismissed by Hon'ble Supreme Court in the case reported in 2007(214)ELT.A115(SC). I find that same view had earlier been taken by the appellant in L.H.Sugar Factories's case reported in 2005(189)ELT.85 wherein it was held that MS Plates used for maintenance of machinery and part of the capital goods are

entitled for Cenvat Credit. In view of this, I hold that the impugned order denying the Cenvat credit in respect of aluminum sheet as capital goods is not correct and hence the same is set aside and the appeal is allowed with consequential relief.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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