TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2476/2007-2477/2007 – SM[BR] Date 07/10/2009

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

To :
(१२) HINDUSTAN ZINC LTD.
YASHAD BHAWAN, NEAR SWAROOP SAGAR,
UDAIPUR 313 001 (RAJ.
HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1198 – 1199 / 2009 –SM[BR] Dated 23.9.2009

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. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.ANAND BHATACHARYA
BINDU BHAWAN, 49, SHASTRI MARG, UDAIPUR(RAJ)
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-110066.
Principal Bench, New Delhi.

E/2476-77/07-SM

(Arising out of Order-in-Appeal No.352-53(HKS)CE/JPR-II/2007 dt.12.6.07 passed by the Commissioner(Appeals), Jaipur)

M/s. Hindustan Zinc Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance
Sh. Ravi Raghvan, Adv. For Appellant

Sh. S.N.Srivastava. DR for Respondent

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

Date of Hearing: 11.8.09
Date of Decision: 23/9/09
Final Order No. 1198 - 1199/2009 SM(BR)

Per Rakesh Kumar:

The only issue involved in these two appeals is as to whether welding electrodes used for repair and maintenance of plant and machinery are eligible for Cenvat credit as capital goods.

2. Heard both the sides.

2.1 Shri Ravi Raghvan, Advocate, Ld. Counsel for the appellant pleaded that the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. vs UOI reported in 2008(228)ELT.517(Raj.)

has held that welding electrodes used for repair and maintenance of plant and machinery would be eligible for Cenvat credit as input as well as as capital goods; that in this case, Hon'ble Rajasthan High Court has over-ruled the Larger Bench judgment of the Tribunal in the case of Jaypee Rewa Plant vs CCE reported in 2003(159)ELT.553 wherein the Larger Bench of the Tribunal had held that the welding electrodes are not eligible for Cenvat credit as inputs; that in any case, the eligibility of welding electrodes for Cenvat credit as capital goods had not been considered by the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant; that the welding electrodes are used as part of the welding machine, which being ~~classified~~ classifiable under heading 84.68 is covered by the definition of 'capital goods' and hence the welding electrodes being part of the welding machine would also be covered by the definition of capital goods.

2.2 Shri S.N.Srivastava, Ld. DR pleaded that the welding electrodes are not covered by the definition of 'capital goods'; that the welding electrodes cannot be considered as inputs also as following the Tribunal's judgment in the case of Jaypee Rewa Plant(supra), the Tribunal in the case of SAIL vs CCE, Ranchi reported in 2008(222)ELT.233 held that the welding electrodes are not eligible for Cenvat credit as inputs and SLP filed by SAIL to Hon'ble Supreme Court against the judgment of the Tribunal has been dismissed by Hon'ble Supreme Court with the words – "Delay condoned. On the facts of this case, the matters stand dismissed"; that the wording of the Hon'ble Supreme Court's order show that it is a speaking order and hence this judgment would be a binding precedent and that Division Bench of the Tribunal in a recent judgment in Vikram Cement vs CCE, Indore(Final Order No.603/09 dt.10.9.09), relying upon Hon'ble Supreme Court's judgment in the case of Kunhayammed vs State of Kerala reported in 2001(129)ELT.11(SC) has held that Hon'ble Supreme Court's order in the case of SAIL vs CCE, Ranchi(supra) dismissing the SLP on the facts of the case is a speaking order, which would be binding on all the Courts and the Tribunal and that this judgment of Hon'ble Supreme Court had not been considered by the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd.(supra).

3. I have carefully considered the submissions from both the sides and perused the records. The welding electrodes are used for repair and maintenance of the cement plant and by attaching the same with welding machine or in other words, as part of the welding machine. The welding machine is classifiable under heading 84.68 of the tariff and hence the same is covered by Clause (i) of Rule 2(a) of Cenvat Credit Rules,2004 and since the welding electrodes are part of the welding machine, the same would also be covered by Clause (iii) of Rule 2(a) of Cenvat Credit Rules,2004. From the definition of 'capital goods' as given in Cenvat Credit Rules,2004 it will be seen that the term "capital goods" covers the goods listed in Rule 2(a) which are used in the factory of the manufacturer of the final product and thus for being covered by the definition of capital goods, what is required is that

the item must be listed as capital goods in Rule 2(a) and it should be used in the factory of the manufacturer - it is not material as to whether the item is used in or in relation to manufacture of finished goods. ~~Thus~~ Therefore, I am of the view that the welding electrodes are covered by the definition of capital goods. I also find that the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd.(supra) has specifically held that welding electrodes are eligible for Cenvat credit as inputs as well as capital goods. In the judgment of the co-ordinate bench in the case of Vikram Cement vs CCE, Indore(supra) cited by Ld. DR, the eligibility of welding electrodes for Cenvat credit only as inputs has been considered and the eligibility of the welding electrodes for Cenvat credit as capital goods has not been considered. Moreover, the Tribunal in para 27 of the judgment has observed that the decision of the Hon'ble Rajasthan High Court undoubtedly would be binding on the parties to the said case. In this regard, the relevant observations of the Tribunal in para 27 of the order of the judgment are reproduced below:

> "In the facts and circumstances of the case, therefore, though it cannot be said that the decision of the Hon'ble Rajasthan High Court has been over-ruled by the Apex Court while dismissing the SLP in SAIL's case, fact remains that the Apex Court refused to interfere in the said decision for reason disclosed in the order dismissing the SLP, and hence bearing in mind the ruling of the Apex Court in the case of Kunhayammed read with in Dhanwanti Devi case, it would be binding upon the Tribunal. Having said so, we hasten to clarify that the decision of the Hon'ble Rajasthan High Court would undoubtedly be binding on the parties to the said case. However, the said decision would have to be read alongwith the order of the Apex Court in the SLP in SAIL's matter. Undoubtedly, in SAIL's matter, the

> decision in Jaypee Rewa case has been followed. Being so, the ratio of Jaypee Rewa would be binding upon this Tribunal being the decision of the Larger Bench".

4. Since in the present case, the appellant are M/s. Hindustan Zinc Ltd. the judgment of the Hon'ble Rajasthan High Court in their own case holding that Cenvat credit is available in respect of welding electrodes, as ' inputs' as well as 'capital goods' would be binding irrespective of whether the welding electrodes are treated as inputs or capital goods. I also find that the Hon'ble Supreme Court in the case of East India Commercial Co. vs Collector reported in 1983(13)ELT.1342(SC) has held that the Central Excise Authorities are bound by the law decided by the Hon'ble High Court within whose territorial jurisdiction, such authorities are functioning. In view of this position relying upon Hon'ble Rajasthan High Court's in the appellant's own case, I hold that the welding electrodes are eligible for Cenvat credit as capital goods. In view of this, the impugned order is not sustainable and the same is set aside. The appeals are allowed.

(Pronounced in the Court on 23/9/09.)

(Rakesh Kumar)
Member Technical

km