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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/126 /2008 – SM[BR] Date 11/01/2010

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 ROSA SUGAR WORKS, SHAHJAHNPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 38 / 2010 –SM[BR] dated 6.1.2010 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 ROSA SUGAR WORKS, SHAHJAHNPUR

ROSA, SHAHJAHANPUR, UP

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ 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)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.126 of 2008

(Arsing out of Order-in-Appeal No.117/CE/LKO/07 dated 27.09.2007 passed by the Commissioner of Central Excise (Appeals), Lucknow)

Date of Hearing: 16.12.2009
Date of Decision: 16.12.2009

CCE, Lucknow — Appellant

Vs.

M/s.Rosa Sugar Works — Respondent

Present for the Appellant: Shri I.Baig, SDR
Present for the Respondent: Shri Bipin Garg, Advocate

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Final **ORDER NO.** 38/2010 SM (BR)

PER: D.N.PANDA

Revenue has come up in appeal being aggrieved by order dated 27.09.2007 passed by the learned Commissioner (Appeals) raising grievance that cenvat credit shall not be admissible on the welding electrodes. Ld.Counsel submits that issue of cenvat credit on welding electrodes is no more in res Integra. Tribunal is remanding such matter back to the adjudicating authority for factual verification and to pass appropriate orders as to admissibility of cenvat credit on the basis of decision in Vikram Cement -2009 (242) ELT 545.

2. Heard both sides and perused the records.

3. Sequentially two orders have been passed by the Tribunal on the same issue on welding electrodes. One is in Vikram Cement vs. CCE, Indore reported in 2009 (242) 545 and in the case of Kisan Sahkari Chini Mills Ltd. vide Order No.1268/09/EX dated 03.11.2009.

4. In view of the resolution of the dispute, the respondent requires fair opportunity of arguing the matter before the learned adjudicating authority to prove its stand on the use of welding electrodes for proper decision applying the rulings of the Tribunal in above of two cases.

5. In the result, the appeals is disposed off with remand to the learned adjudicating authority for re-examination of the issue afresh, setting aside the impugned order.

(D.N.PANDA)
JUDICIAL MEMBER

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