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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 / 2604 – 2605 / 2007 –SM[BR] Date 06/11/2009

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 ROSA SUGAR WORKS, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1405 – 1406 / 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 ROSA SUGAR WORKS,
ROSA SAHAJAHANPUR(UP)

[2] M/S SEKSAIA BISWAN SUGAR FACTORY PVT.LTD.
SITAPUR [U.P]

2. Adv. / Consult SHRI ATUL GUPTA, CO. SEC.
N/V;-------------------------------
[2] 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 AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2604 & 2605 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.48-CE/LKO/07 dated 30.04.2007 and Order-in-Appeal No.50-CE/LKO/07 dated 30.04.2007 of the Commissioner of Central Excise & Service Tax (Appeals), Lucknow]

Date of Hearing/ Decision:22.09.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE, Lucknow ...Appellants
(Rep. by Shri Sunil Kumar, JDR)

Vs.

(1)M/s.Rosa Sugar Works
(2)M/s. Seksaria Biswan Sugar Factory Pvt. Ltd. ....Respondents
(Rep. by Shri Atul Gupta, Co. Secretary and Shri Kapil Vaish, Chartered Accountant)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 1405-1406/2009 SM (Br) /Dated:22.09.2009

<u>Per P.K. Das:</u>

Common issue is involved in these appeals and, therefore, both are being taken up together for disposal.

2. Heard both sides and perused the records.

3. The Original Authority disallowed credit on Welding Electrodes and imposed penalty. In the case of M/s. Rosa Sugar Works, the credit of Rs.16,945/- was denied and the penalty was imposed to the equal amount of duty. In the case of Seksaria Biswan Sugar Factory Pvt. Ltd., the credit was denied to Rs.10,678/- and was imposed penalty of Rs.10,000/-. The Commissioner (Appeals) set aside the penalties in both the cases. Hence, the Revenue filed these appeals.

4. Ld. JDR reiterates the grounds of appeal.

5. Ld. Counsel on behalf of M/s.Rosa Sugar Works submits that the respondent filed appeal before the Tribunal against inadmissibility of credit on Welding Electrodes. The Tribunal vide Final Order No.650/2009-SM (BR) dated 30.06.2009 set aside the denial of credit on Welding Electrodes. Ld. Counsel on behalf of M/s. Seksaria Biswan Sugar Factory Pvt. Ltd. submits that the Revenue contended that minimum penalty under Rule 25 would be imposable. He submits that the Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Bhopal Vs. Rama Wood Craft (P) Ltd. reported in 2008 (225) ELT 348 (Tribunal-Larger Bench) held that no minimum penalty is prescribed under the rules.

6. I find that in the case of Rosa Sugar Works, denial of credit on Welding Electrodes is already set aside by the Tribunal and, therefore, there is no reason for imposition of penalties. In the case of Seksaria Biswan Sugar Factory Pvt. Ltd., I find that the decision of the Larger

Bench of the Tribunal is applicable. In any event, the denial of credit on Welding Electrodes is interpretation of the provisions of the law and, therefore, the imposition of penalty is not warranted

7. In view of that, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 22.09.2009.

(P.K. Das)
Member (Judicial)

Ckp.