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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/1218/2009 – SM [BR] Date **15/02/2011**

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

To :
M/S SAINSONS PPAPER INDUSTRIES LTD.
PLOT NO. 5, VILLAGE BAKHLI, TEHSIL
PEHOWA,DISTT. KURUKSHETRA, HARYANA.

M/S SAINSONS PPAPER INDUSTRIES LTD. Appellant

Vs

C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 122 / 2011 –SM[BR]** dated 3.2.2011 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. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8,
PANCHKULA (HARYANA) 134119.
2. Adv. / Consult SHRI R.L.PRABHAKAR CO. SECRETARY.
M/S APPELLANT;-----------------------------
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:03.02.11
Date of decision:03.02.11

Excise Appeal No.E/1218 of 2009-SM(BR)

[Arising out of Order-in-Appeal No.70/ANS/PCK/2009 dated 12.03.2009 passed by the Commissioner of Central Excise (Appeals), Gurgaon)].

M/s. Sainsons Paper Industries Ltd. Appellant

Vs.

CCE, Gurgaon Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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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?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Shri R.L. Prabhakar, Co. Secretary for the appellant/Deptt.
Rep. by Shri R.K. Gupta, SDR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No....122/2011 SM (BR)..../Dated:3.2.2011

Per Rakesh Kumar

The appellants are paper mill engaged in the manufacture of semi-kraft paper chargeable to central excise duty. They availed Cenvat credit of duty paid on inputs and capital goods as per the provisions of Cenvat Credit Rules. The dispute in this case is as to whether the following five items are eligible for Cenvat Credit vide as capital goods or as inputs –

(a) Front & Loader – This item has been received on invoice no.3001 dated 28.01.2008 issued by the supplier, M/s. Bull Machines (Pvt.) Ltd. and its classification has been mentioned in the invoice under sub-heading No. 8708, 1010 as part and accessories of the motor. It is claimed to be as accessory of fork lifts of Heading No.87.01 & 87.05.

(b) Loctite- This item, which is a gum is classified under Chapter Heading No.35069999 of the Tariff which is claimed to have been used in fabrication of boiler.

(c) Welding Electrodes – This item has been claimed to have been used for repair and maintenance of the machinery.

(d) Maxtreat 330V: This item is a chemical falling under Heading no.2921.30.90 of the Tariff and according to the appellant, it is claimed to have been used in the boiler to protect its inner surface and improve its efficiency.

(e) Champion Style – It is claimed to be gasket used in the Digester Mill, which falls under Heading 6812 of the tariff and is claimed to be part of the Digester Mill.

2. The Asstt. Commissioner denied the Cenvat credit in respect of these five items and confirmed the demand of Rs.66,956/- along with interest. On appeal to the Commissioner (Appeals) against the Original Adjudicating Authority' order, the Commissioner (Appeals) vide order dated 12.03.2009 while upholding the original adjudicating authority's order has also imposed penalty equal to the Cenvat credit demand under Rule 15 of the Cenvat Credit Rules, 2004. It is against this order that the present appeal has been filed.

3. Heard both the sides.

3.1 Shri R.L. Prabhakar, Co. Secretary representing the appellant, pleaded that Front and Loader are used as part of the handling equipment falling under Heading 84.27 and 84.28 of the Tariff and hence the same are covered by the definition of capital goods; that Loctite is a gum which is used for fabrication of boiler and hence it has to be treated as input used for the manufacture of the capital goods which are used in the factory, that Welding Electrodes have been used for repair and maintenance of the plant and machinery and in terms of the Hon'ble Chattisgarh High Court's judgement in the case of **Ambuja Cements**

Eastern Ltd. reported in 2010 (256) ELT 690 (Chattisgarh) and the Hon'ble Rajasthan High Court in the case of **M/s. Hindustan Zinc Ltd. Vs. CCE, Jaipur-II reported in 2008 (227) ELT 309 (Tribunal-Delhi),** the same would be eligible for Cenvat Credit as capital goods or inputs; that Maxtreat 330v is a chemical which is used for increasing the efficiency of the boiler and hence the same would be covered by the definition of the inputs and that Champion Style is a gasket which is used as part of the mill falling under Heading No.8439.10 of the Tariff and being part of the capital goods of Chapter Heading No.84, the same would be covered by the definition of capital goods, that in view of this, all these items are eligible for Cenvat credit either as capital goods or as inputs and hence the Commissioner (Appeals)'s order confirming the denial of cenvat credit and Cenvat credit demand and imposing the penalty which had not even been imposed by original adjudicating authority is not correct.

3.2. Shri R.K. Gupta, the learned Departmental Representative, defended the impugned order reiterating the findings of the Commissioner (Appeals) and pleaded that Front and Loader is mentioned in the supplier's invoice itself as falling under sub-heading no.87081010 of the Tariff which is the sub-heading for the parts and accessories of the motor vehicles of Heading No.8701 to 8705 and being falling under Chapter 87 this item would not be covered by the definition of capital goods; that the Loctite falling under Heading No.35069999 and Maxtrteat 3330V falling under Heading No.29213090 are not covered by definition of capital goods and the same cannot be treated as inputs as the appellants have not shown as to how they are used in relation to the manufacture of the final products, that welding electrodes used as repair and maintenance of the plant and machinery are not eligible for Cenvat credit as activity of the repair and maintenance is not part of the manufacture and that Item - Champion Style falling under Heading No.6812 is not covered by the definition of the capital goods and the appellants have also not shown as to with which machinery the same is used, and that in view of this, there is no infirmity in the impugned order.

4. I have carefully considered the submissions from both the sides and perused the records. I find that in the impugned order-in-appeal itself it has been mentioned that according to the appellant Front and Loader are used as parts of the fork lift falling under Chapter Heading No.8427 or 8428. But the Commissioner (Appeals) has not given any findings as to why this claim of the appellant is not acceptable. Similarly, no finding has been given in respect of the use of the product Loctite, Maxtreat 3330V as according to the appellant, while Loctite is used for fabrication of the boilers, Maxtreat is used for increasing the efficiency of the boilers and if this so, all these items would be covered by the definition of inputs. Similarly, no findings has been given with regard to the item –

"Champion Style" falling under Heading No.6812 of the Tariff, which according to the appellant is used as Gasket in the pulp mill falling under Heading No. 8439.

5. The definition of the capital goods as given under Rule 2(a) of Cenvat Credit Rules not only covers the goods falling under Chapter 82, 84, 85, 90, Heading Nos. 68.02 and sub-heading 6810.10, pollution control equipment, but also covers components, spares and accessories of these items and the components, parts & accessories of these items can be of any Chapter Heading and need not be of the Chapter and Headings enumerated in Clause 2(a)(A)(i) and 2(a)(A)(ii) of the definition of the capital goods. As regards the Welding Electrodes while the appellants' plea is that the same are used for repair and maintenance of the plant and machinery, in terms of the judgement of the Rajasthan High Court in the case of **M/s. Hindustan Zinc Ltd.** (supra) and of Chattisgarh High Court in the case of **Ambuja Cements Eastern Ltd.** (supra), the Welding Electrodes are used in the repair and maintenance of the plant and machinery are eligible for cenvat credit. But in the impugned order, the Commissioner (Appeals) has not discussed as to how the ratio of these judgements is not applicable to this case.

6. In view of this, the impugned order being a non-speaking order, is set aside and the matter is remanded to the Commissioner (Appeals) for

de novo decision. In the course of de novo proceedings, the Commissioner (Appeals) should determine the eligibility of front & loader, loctite, Maxtreat 330V and Champion Style for cenvat credit either as inputs or as capital goods after examining the appellant's plea that all these items are either covered by the definition of 'inputs' or being component or accessories of capital goods of Chapter 84, as covered by the definition of capital goods. As regards the welding electrodes, he should examine the issue of there eligibility for cenvat credit in the light of the above mentioned judgements of Hon'ble Chattisgarh High Court and Rajasthan High Court.

7. The appeal stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.