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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/2982/2009 – SM[BR] Date **07/06/2011**

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

To :
BAJAJ HINDUSTAN LTD
KINAUNI, DISTT- MEERUT.

BAJAJ HINDUSTAN LTD Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 285 / 2011 –SM[BR]** Dated 4.5.2011 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. MEERUT I
EXCISE CHOWK,OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
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. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 2982 of 2009 (SM)

[Arising out of the Order-in-Appeal No.90/CE/MRT-I/2009 dated 30/07/2009 passed by The Commissioner (Appeals), Central Excise & Service Tax, Meerut-I.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would 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 Department Authorities?	:

Bajaj Hindustan Ltd. Appellant

Versus

CCE, Meerut-I Respondent

Appearance

Shri R.K.Gupta, SDR – for the respondent.

Ms. Sukriti Das, Advocate– for the appellant.

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

DATE OF HEARING : 04/05/2011.

Final Order No. 285/2011 SM(BR) Dated : ___________

Per. Rakesh Kumar :-

The only dispute in this case is as whether the appellant, engaged in manufacturing of V.P.sugar with molasses as its by-product, are eligible for Cenvat Credit in respect of welding electrodes used in repair and maintenance for plant & machinery. Deputy Commissioner vide Order-In-Original dated 3012.08 decided this issue against the appellant and confirmed Cenvat Credit demand of Rs.4,64,999/- along with interest and appropriated an amount of Rs.4,56,212/- already deposited towards this demand. On appeal to the Commissioner(Appeals), the Commissioner (Appeals) vide Order-In-Appeal dated 30.07.09 upheld the Deputy Commissioner's order. Against this order of Commissioner (Appeals), this appeal has been filed.

2. Ms. Sukriti Das, Advocate for the respondent pleaded that the issue involved in this case is covered by the judgement of Hon'ble Rajasthan High Court in the case of

Hindustan Zinc Ltd. reported in 2008(228)ELT-517(Raj.) and Hon'ble Chhatisgarh High Court in the case of Ambuja Cement Eastern Ltd. reported in 2010(256)ELT-670. She, therefore, pleaded that the impugned order is not sustainable.

3. Shri R.K.Gupta, the Ld. DR defended the impugned order by reiterating the findings of CCE(Appeals) in the impugned order.

4. I have carefully considered the submissions from the Departmental Representative and perused the records.

5. The issue involved in this matter stands decided against the department by Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd vs. Union of India (supra) and Hon'ble Chhatisgarh High in the case of Ambuja Cement Eastern Ltd. vs. CCE, Raipur reported in 2010(256)ELT/690 wherein both the High Courts have held that welding electrodes used for repair & maintenance of plant & machinery are eligible for Cenvat Credit as inputs as well as capital goods. In case of Ambuja Cement Eastern Ltd. (supra), Hon'ble Chhatisgarh High Court also observed that dismissal by Hon'ble Supreme Court of the SLP filed against the judgement of CESTAT, Kolkata Bench in the case of Steel Authority of India Ltd. vs.

Commissioner reported in 2008(222)/ELT/233(Tr.-Kolkata) does not lay down any law as summary dismissal of SLP by the Apex Court neither lays down any law nor results in any binding precedent. Following the judgements of above two High Courts, I ,therefore, held that the impugned order denying Cenvat Credit in respect of welding electrodes used for repair & maintenance for plant & machinery is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I