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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/456 , 457- 458 / 2009-SM[BR]&E/ MISC/ 980-981/2009-SM[BR] **Date 18/08/2011**
E / 459 / 2009 –SM[BR]

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

To :

M/S GOBIND SUGAR MILLS LTD.
P.O.AIRA ESTATE, LAKHIMPUR KHERI (U.P.)
M/S GOBIND SUGAR MILLS LTD.

[2] M/S GOBIND SUGAR MILLS LTD.
P.O.AIRA ESTATE, LAKHIMPUR KHERI [U.P]
[3] M/S GOBIND SUGAR MILLS LTD.
P.O.AIRA ESTATE, LAKHIMPUR KHIERI[U.P.]

Appellant

Vs

C.C.E. LUCKNOW

Respondent

I am directed to transmit herewith a certified copy of **Final order No. 467 – 470 /2011-SM[BR]** dated 3.8.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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

[4]**M/S OUDH SUGAR MILLS LTD.**
HARGAON, SITAPUR [U.P.]

Assistant Registrar
(SM Appeal Branch)

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

Date of Hearing:03.08.11
Date of decision:03.08.11

Excise Appeals No.456, 457-458 of 2009
& Excise Misc. Applications Nos.980-981 of 2009

[Arising out of Order-in-Appeal No.192-CE/LKO/2008 dated 27.11.2008 passed by the Commissioner of Central Excise (Appeals), Lucknow].

Gobind Sugar Mills Ltd. Appellant

Vs.

CCE, Lucknow Respondent

Excise Appeal No.459 of 2009

M/s. Oudh Sugar Mills Ltd. Appellant

Vs.

CCE, Lucknow 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?

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ppearance: Rep. by Shri S.K. Bhaskar, DR and Shri Anil Khanna, DR
for the appellants.
Rep. by Shri Anil Sood, Advocate for the parties.

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

Final Order No. 467-470/2011 SM (BR)/Dated:3.8.2011

Per Rakesh Kumar

The only issue involved in these appeals is as to whether the welding electrodes used for repair and maintenance of the plant and machinery of the sugar mills are eligible for cenvat credit either as inputs or capital goods. The original adjudicating authority in these cases had disallowed the cenvat credit in respect of the welding electrodes and had confirmed the cenvat credit along with interest and imposed penalty on them. The orders of the original adjudicating authority were upheld by the Commissioner (Appeals) against these orders of the Commissioner (Appeals). Against these orders of the Commissioner (Appeals), these three appeals have been filed. In respect of Appeals Nos.E/457-458 of 2009, misc. applications Nos/E/M/980-981 of 2009-SM (BR) have also been filed directing the department not to take coercive action for recovery as in respect of the stay order in this matter, the department had gone ahead with coercive action for recovery of the duty, interest and penalty. Since the main appeals are now taken-up for final disposal, the misc. applications have become infructuous and the same are dismissed.

2. Heard both the sides and perused the records.

3. Shri Anil Sood, Advocate, ld. Counsel for the appellants pleaded that the issue involved in these cases is no longer res integra and same sands decided by the judgement in the case of Ambuja Cement Eastern Ltd. is no longer res integra. The Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. reported in 2008 (228) ELT 517, and the Hon'ble Chattisgarh High Court in case of Ambuja Cement Eastern Ltd. reported in 2010 (256) ELT 690 has held that welding electrodes used for repair and maintenance of the plant and machinery are eligible for cenvat credit either as inputs or capital goods and this Tribunal in the case of M/s. The Oudh Sugar Mills Ltd. vide Final Order No.156-158/2011-SM(BR) dated 9.2.2011 following the above judgements of two High Courts had decided this issue in favour of the appellants. He, therefore, pleaded that in view of this, the impugned orders are not sustainable.

4. Shri S.K. Bhaskar and Shri Anil Khanna, ld. Departmental Representatives defended the impugned orders-in-appeal while reiterating the findings of the Commissioner (Appeals) and pleaded that the issue of eligibility of welding electrodes for cenvat credit has been referred by the Hon'ble Supreme Court in the case of Ramala Sahakari Chini Mills Ltd. Vs. CCE, Meerut-I reported in 2010 (260) ELT 321 (SC), that earlier Division Bench of the Tribunal in the case of Vikram Cement reported in 2009 (242) ELT 545 (Tribunal-Delhi) had held that the welding electrodes used for repair and maintenance of the plant and machinery are not eligible for cenvat credit, that the Tribunal in the case of Steel

Authority of India Ltd. reported in 2008 (222) ELT 233 had held that welding electrodes used for repair and maintenance of the plant and machinery are not eligible for cenvat credit and SLP filed by the Government against this order of the Tribunal was dismissed by the Apex Court vide judgement reported in 2008 (22) RLT A-27 (SC) and that in view of this, there is no infirmity in the impugned orders.

5. I have carefully considered the submissions from both the sides and perused the records. The only issue involved in these appeals is as to whether the cenvat credit used for repair and maintenance of the plant and machinery is eligible for cenvat credit or not. I find that this issue stands decided in favour of the appellant by the judgement of the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) and also by the judgement of Hon'ble Chattishgarh High Court in the case of Ambuja Cement Eastern Ltd. (supra), wherein it was held that welding electrodes used for repair and maintenance of the plant and machinery are eligible for cenvat credit as inputs as well as capital goods. As regards Hon'ble Supreme Court's judgement in the case of Ramala Sahakari Chini Mills Ltd. Vs. CCE (supra) cited by the ld. DR though the issue involved in this case is about the eligibility of the welding electrodes for cenvat credit, the Hon'ble Supreme Court discussing the earlier judgement of the Apex Court in the case of Maruti Suzuki Ltd. has referred that judgement to a Larger Bench and as such, there are no observations of the Apex Court with regard to eligibility of the welding

electrodes for cenvat credit. As regards the dismissal by the Apex Court, the SLP filed by the Government against the judgement of the Tribunal in the case of Steel Authority of India Ltd. in 2008 (222) ELT 233. This point was discussed by the Hon'ble Chattisgarh High Court in the case of Ambuja Cement Eastern Ltd. (supra) observing that the dismissal of SLP without giving observations is non-speaking and not a binding precedent. In view of the above position on the issue involved in this case, the impugned orders denying cenvat credit in respect of the welding electrodes used for repair and maintenance of plant and machinery is not sustainable and the same are set aside. The appeals are allowed. Miscellaneous applications filed in respect of appeals Nos.E/456-459 of 2009 also stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.