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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/1375/2009 – SM[BR]** Date **23/08/2011**

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

To :
M/S DSCL SUGAR RUPAPUR

THE GENERAL MANAGER ,MA.S DSCL SUGAR
RUPAPUR,DISTT. HARDOI
M/S DSCL SUGAR RUPAPUR Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 496/2011-SM[BR]** dated 2.8.2011 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.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

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. IV
Excise Appeal No. 1375 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 25-CE/LKO/2009 dated 03/02/2009 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

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? :

M/s DSCL Sugar Rupapur Appellant

Versus

CCE, Lucknow Respondent

Appearance

Shri Kapil Vaish, C.A. – for the respondent.

Shri S.K. Bhaskar, Authorized Representative (DR) – for the appellant.

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

DATE OF HEARING : 02/08/2011.

Final Order No. 496/2011-SM(BR) Dated : ____________

Per. Rakesh Kumar :-

The main point of dispute in this case is as to whether Welding Electrodes used in sugar mill for repair and maintenance of the plant and machinery during period from August 2002 to March 2003 are eligible for Cenvat credit as inputs or capital goods. Another point of dispute is as to whether the show cause notice dated 7/8/07 issued for allegedly wrongly taken Cenvat credit amounting to Rs. 1,70,913/- is within time as the show cause notice had been issued by invoking extended period under proviso to Section 11A (1) of Central Excise Act. The original Adjudicating Authority as well as the Commissioner (Appeals) have upheld the Cenvat credit demand alongwith interest and also imposition of penalty of equal amount on the appellant.

2. Heard both the sides.

2.1 Shri Kapil Vaish, C.A., the learned Counsel for the appellant, pleaded that Commissioner (Appeals)'s order is not sustainable either on merit or on limitation, that on merits there are judgments of Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Ltd. vs. Union of India** reported in **2008 (228) E.L.T. 517 (Raj.)**, Hon'ble Chhattisgarh High Court in the case of **Ambuja Cements Eastern Ltd. vs. CCE, Raipur** reported in **2010 (256) E.L.T. 690 (Chhattisgarh)** and also of Hon'ble High Court of Karnataka at Bangalore in the case of **CCE, Bangalore – I vs. Alfred Herbert (India) Ltd.** reported in **2010 (257) E.L.T. 29 (Kar.)**, wherein it has been held that welding electrodes used for repair and maintenance of the plants and machinery are eligible for Cenvat credit as inputs as well as capital goods, that in any case, the entire demand is time barred, as while the period of demand is August 2002 to March 2003, the show cause notice invoking extended period has been issued on 07/08/2007, and as is clear from ER-1/RT-12 returns filed by the appellant during August 2002, the availment of Cenvat credit in respect of welding electrodes had been clearly disclosed and thus the department was aware that the appellant have taken capital goods Cenvat credit in respect of the welding electrodes used for repair and maintenance of the plant and machinery. He, therefore, pleaded that the impugned order is not sustainable.

2.2 Shri S.K. Bhaskar, the learned Departmental Representative, defended the impugned order by reiterating the Commissioner (Appeals)'s findings and pleaded that the issue of eligibility of welding electrodes used for repair and maintenance for Cenvat credit has been referred by the Hon'ble Supreme Court to a Larger Bench vide judgment in the case of **Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut – I** reported in **2010 (260) E.L.T. 321 (S.C.)**, that the Government has filed a SLP against the judgment of Hon'ble Chhattisgarh in the case of **Ambuja Cements Eastern Ltd. vs. CCE, Raipur** (supra) and the same has been admitted and that extended limitations period has been correctly invoked. He, therefore, pleaded that in view of this position, the Commissioner (Appeals)'s order denying Cenvat credit in respect of welding electrodes used for repair and maintenance of plant and machinery is correct.

3. I have carefully considered the submissions from the both the sides and perused the records.

4. The issue of eligibility of the welding electrodes used for repair and maintenance for plant and machinery for Cenvat credit stands decided in the appellant's favour by Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Ltd. vs. Union of India** (supra), of Hon'ble Chhattisgarh High Court in the case of **Ambuja Cements Eastern Ltd. vs. CCE, Raipur** (supra) and of Hon'ble Karnataka High Court in the case of **CCE, Bangalore – I vs. Alfred Herbert (India) Ltd.** (supra). Though according to the department, the Government has filed a SLP to Hon'ble Supreme Court against the judgment of Hon'ble Chhattisgarh High Court in the case of **Ambuja Cements Eastern Ltd. vs. CCE, Raipur** (supra), the judgment of Hon'ble High Court has not been stayed and, hence, the same is binding. In the case of **Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut – I** (supra) cited by the learned Departmental Representative, it is the judgment of Hon'ble Supreme Court in the case of **Maruti Suzuki Ltd. vs. Commissioner** reported in **2009 (240) E.L.T. 641 (S.C.)**, which has been referred to a Larger Bench.

As such, as on today, it is the judgments of Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Ltd. vs. Union of India** (supra), Hon'ble Chhattisgarh High Court in the case of **Ambuja Cements Eastern Ltd. vs. CCE, Raipur** (supra) and Hon'ble Karnataka High Court in the case of **CCE, Bangalore – I vs. Alfred Herbert (India) Ltd.** (supra), which hold the field and the same are in the favour of the appellant. In view of this, the impugned order denying Cenvat credit to the appellant in respect of welding electrodes is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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