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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/1559 – 1560 / 2008 –SM[BR] **Date 12/10/2011**

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

To :
1. **THE DHAMPUR SUGAR MILLS LTD.**
2. **THE DHAMPUR SUGAR MILLS LTD.**
DHAMPUR (N.R.)DISTT. BIJNOR, (U.P.)PIN-246761.

M/S THE DHAMPUR SUGAR MILLS LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 678 – 679 /2011-SM[BR]** dated 6.9.2011 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 II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.RAJESH KUMAR
24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.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 (Harvana)
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:06.09.11
Date of decision:06.09.11

Excise Appeal No.E/1559-1560 of 2008-SM

[Arising out of Order-in-Appeal No.58-CE/MRT-II/2008 dated 28.04.2008 in Appeal No.E/1559 of 2008and Order-in-Appeal No.48-CE/MRT-II/2008 dated 12.03.2008 in Appeal No.E/1560 of 2008 passed by the Commissioner of Central Excise (Appeals), Meerut-II.

M/s. The Dhampur Sugar Mills Ltd. Appellant

Vs.

CCE, Meerut-II 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 Rajesh Kumar, Advocate for the appellant.
Rep. by Shri B.L. Soni, DR for the respondent.

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

Final Order No. 678 - 679/2011 SM(BR)/Dated:6.9.2011

Per Rakesh Kumar

The only issue involved in these two appeals is as to whether the Welding Electrodes used for repair and maintenance of plant and machinery and fabrication of the machinery are eligible for cenvat credit either as inputs or capital goods or not. The department was of the view that the welding electrodes are not eligible for cenvat credit either as inputs or capital goods. On this basis, the cenvat credit demand of Rs.3,50,085/- for the period from October, 2005 to March, 2006 and the demand of Rs.1,17,069/- for the period from April, 2006 to December, 2006 were confirmed against the appellant along with interest. On appeal to ~~the~~ CCE (Appeals) orders of the original adjudicating authority regarding confirmation of cenvat credit demand alongwith interest was upheld, but penalties were set aside. Against ~~Agaginst~~ these orders of the Commissioner (Appeals), these two appeals have been filed.

2. Heard both the sides.

3. Shri Rajesh Kumar, Advocate, ld. Counsel for the appellants pleaded that there are judgements of the two High Courts – **Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. Vs. Union of India reported in 2008 (221) ELT 517 and of Hon'ble Chattisgarh High Court in the case of Ambuja Cements Eastern Ltd. reported in**

2010 (256) ELT 690 (Chattisgarh), which are in four of the appellant, that the Hon'ble Chattisgarh High Court in the case of **Ambuja Cements Eastern Ltd.** also considered the revenue's plea that the SLP filed by SAIL against the Tribunal's judgement has been dismissed by the Hon'ble Supreme Court vide judgement reported **in 2008 (229) ELT A-127 (SC)** and has observed that an order refusing special leave to appeal does not stand substituted in place of the order under challenge and all that it means that the court was not inclined to exercise its discretion so as to allow the appeal being filed, and that in view of the judgement of the two High Courts, which are in favour of the appellant, the impugned orders denying cenvat credit in respect of welding electrodes and upholding the cenvat credit demand are not sustainable. He also cited the judgement of the Tribunal in the case of **M/s. Oudh Sugar Mills Ltd. Vs. CCE, Lucknow vide Final Order No.156-158/2011-SM (BR) dated 9.2.2011** wherein the Tribunal relying upon the above mentioned two High Court's judgement held that that cenvat credit is admissible in respect of welding electrodes used for repair and maintenance of the plant and machinery.

4. Shri B.L. Soni, ld. Sr. Departmental Representative, pleaded that the Division Bench of the Tribunal in the case of **Kisan Sahkari Chini Mills reported in 2010 (261) ELT 308 (Tribunal-Delhi)** has held that welding electrodes used for repair and maintenance of the plant and

machinery are not eligible for cenvat credit. He also emphasised that the Division Bench of the Tribunal in the case of Steel Authority of India Limited (supra) has held that welding electrodes used for repair and maintenance of the plant and machinery are not eligible for cenvat credit and an SLP filed by the Steel Authority of India Limited before the Supreme Court was dismissed vide judgement reported in **2008 (229) ELT A-127 SC** after condoning the delay and from the words of the Apex Court's order, it is clear that the SLP has been dismissed after considering the facts of that case. He also pleaded that the issue of eligibility of welding electrodes for cenvat credit was also before the Apex Court in the case of **Ramala Sahkari Chini Mills Ltd. reportedin 2010 (260) ELT 321 (SC)** and the Apex Court had referred the matter to the Larger Bench.

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

6. As regards the plea of the ld. DR that the issue of eligibility of welding electrodes for Cenvat credit has been referred by the Apex Court to the Larger Bench in the case of **Ramala Sahkari Chini Mills Ltd. (supra)**, on perusal of this judgement, I find that what has been referred by the Apex Court to the Larger Bench is the ratio of the Apex Court judgement in the case of **Maruti Suzuki Ltd. reported in 2009 (240) ELT 641 (SC)** and not the issue of cenvat credit in respect of welding electrodes, used for repair and maintenance of plant and machinery.

As regards the plea of ld. DR that the judgement of the Apex Court in the case of SAIL reported in **2008 (229) ELT A-127),** by which the SLP filed by the SAIL against the Tribunal's order was dismissed is a binding precedent, I find that on this very issue, the Hon'ble Chattisgarh High Court in its para-17,18 and 19 of the judgement in case of Ambuja Cements Eastern Ltd. (supra) has observed that this order of the Hon'ble supreme Court, which merely dismissed the SLP is not a binding precedent. Since on the issue involved in this case there are judgements of two High Courts, which are in favour of the appellant, in my view these two judgements ~~have~~ hold the fields. In view of this, the impugned order is not sustainable and the same is set aside. The appeals are allowed with consequential relief.

(Rakesh Kumar)
Member (Technical)

Ckp.

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FAX : 011-26108426 **REGISTERED / AD**

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
SINGLE MEMBER APPEAL BRANCH

Dated: **07/11/2012**

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Misc Order No. MO/260-263/2012 dated 25/10/2012

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of **the Central Excise and Salt Act, 1944.**

Assistant Registrar
SINGLE MEMBER Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1. 2.	**E/ROM/3948/2012, E/COD/3949/2012& E/ROM/3950/2012& E/COD/3951/2012**	**E/1559/2008 E/1560/2008**	**THE DHAMPUR SUGAR MILLS LTD.** **THE DHAMPUR SUGAR MILLS LTD.** DHAMPUR (N.R.)DISTT. BIJNOR, (U.P.)PIN-246761.	**C.C.E. MEERUT II** Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

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Copy To
1. Advocate(s) / Consultant(s):

Rajesh kumar
24A, DDA SFS Flat,
Mount Kailash, East of Kailash,
New Delhi,
Delhi

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2. Bar Association, CESTAT, Delhi **3.** Director Publications, Customs, Excise. I.P. Estate, Delhi

4. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

5. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

6. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

7. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

8. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad-500038

11. C.D.R 12. Office Copy 13. Guard File

Assistant Registrar
SINGLE MEMBER Appeal Branch

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

Date of Hearing/ Decision:25.10.2012

(Arising out of Final Order No.678-679/2011-SM (BR) dated 6.9.2011 passed by the CESTAT, New Delhi)

M/s. Dhampur Sugar Mills Ltd. ...Appellants

Vs.

CCE, Meerut-II ...Respondent

Appearance: Shri Rajesh Kumar, Advocate for the appellant.
Shri R.K. Madhur, DR for the respondent.

Excise ROM NO.3948/of 2012 & E/COD/3949/2012
In Appeal No.E/1559 of 2008-SM and E/ROM/3950/2012 & E/COD/3951/2012 in A.No.1560/08
MISC - 260-263/2012 SM (BR)

Per Rakesh Kumar

This is an application filed under Section 35 C(2) of the Central Excise Act, 1944 for rectification of mistake apparent from the record in the Final Order No.678-679/2011-SM(BR) dated 6.9.2011 by which the appeal had been allowed with consequential relief. The mistake which is to be rectified is about the amount of cenvat credit demand as mentioned in para-1 of the order. Since the limitation period prescribed for rectification as mentioned in Section 35 C(2) is six months from the date of the order and since this application was filed on 11.10.2012, i.e. after more than one year from the date of the Final Order, an application for condonation of delay has also been filed.

2. Heard both the sides.

3. Shri Rajesh Kumar, ld. Counsel for the appellant, pleaded that the figures of the cenvat credit demand as mentioned in para-1 of the Final order are not correct and that instead of the figures of Rs.3,50,085 and Rs.117,069/- the correct figures are Rs.3,62,852/- and 1,70,698/- respectively, that though the application for rectification of mistake has been filed after expiry of six months, the Tribunal has inherent powers to condone the delay. He, therefore, pleads for condonation of delay in filing of the appeal and also the necessary correction in the final order.

4. Shri R.K. Mathur, ld. DR opposed the application pleading that the application for rectification is time barred as limitation period for ROM application as prescribed in Section 35 C(2) is six months from the date of final order and there is no provision in Section 35 C(2) for condonation of delay in filing of the ROM Application. He, therefore, pleads that ROM applications filed by the appellant being time barred ~~is~~ are not maintainable.

5. I have considered the submissions from both the sides. Under Section 35 C(2) the limitation period prescribed for filing application for rectification of mistake apparent from the records, is six months from the date of the order.

There is no provision in Section 35 C(2) for condonation of delay in filing of the ROM application. In view of this, I hold that ROM applications ~~is~~ are time barred. The same along with COD applications ~~is~~ are, therefore, dismissed.

(Rakesh Kumar)
Member (Technical)

Ckp.