15

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/863 /2009,1088/2009 – SM[BR] **Date 27/10/2011**

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant
Vs
M/S NEOLI SUGAR FACTORY, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 731 – 732 / 2011-SM[BR]** dated 12.10.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S NEOLI SUGAR FACTORY,
NEOLI, DISTT-ETAH

2. Adv. / Consult **SHRI RAJKUMAR FCA**
U-18, PAWAN PLACE, SAMAD ROAD, ALIGARH.

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)

[2] **M/S NEOLI SUGAR FACTORY,**
POST : NEOLI,NEOLI (DISTT. EATH)

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 Appeals No. 863 and 1088 of 2009 (SM)

CCE, Lucknow — Appellant

Versus

M/s Neoli Sugar Factory — Respondent

and vice-versa

[Arising out of the Order-in-Appeal No. 03-CE/LKO/2009 dated 27/01/2009 passed by The Commissioner (Appeals), Central Excise & Service Tax, 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? :

Appearance

Ms. R. Jagdav, Authorized Representative (SDR) – for the appellant.

Shri Raj Kumar, F.C.A. – for the respondent.

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

DATE OF HEARING : 12/10/2011.

Final Order No. 731-732/2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The only issue involved in this case is as to whether welding electrodes ~~are~~ used for repair and maintenance of sugar mills plants are eligible for Cenvat credit or not. The department being of the view that the welding electrodes are not eligible for Cenvat credit, denied the same and in this regard the Jurisdictional Assistant Commissioner vide order-in-original dated 27/6/08 confirmed the Cenvat credit demand of Rs. 5,76,052/- against the appellant alongwith interest and imposed penalty on them of equal amount under Rule 15 (2) of Cenvat Credit Rules, 2004. On appeal to Commissioner (Appeals) against this order, the Commissioner (Appeals) vide order-in-appeal dated 27/1/09, while upholding the Cenvat credit demand, set aside the order of penalty and interest. Against this order of the Commissioner (Appeals), while the department has filed appeal challenging the setting aside of penalty and interest, the appellant have filed appeal against upholding the confirmation of Cenvat credit demand.

2. Heard both the sides.

2.1 The issue involved in this case is no longer res-integra, as the same stands decided in favour of the appellant by the judgment of Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Limited vs. Union of India** reported in **2008 (228) E.L.T. 517 (Raj.)** and also of 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).** In view of the judgments of these two High Courts, the impugned order upholding the Cenvat credit demand in respect of welding electrodes used for repair and maintenance of the plant and machinery is not sustainable. The same is set aside. Since, the Cenvat credit demand itself is not sustainable, there is no question of demand of interest or imposition of penalty. In view of this, while the appeal filed by M/s Neoli Sugar Factory is allowed and the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK