(16)

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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/759 - 761 / 2011-SM[BR] & E/ STAY / 916 – 918 / 2011-SM[BR] Date 29/11/2011

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S BANSIWALA IRON & STEEL ROLLING MILLS,
2. M/S BANSIWALA IRON & STEEL ROLLING MILLS,
3. M/S BANSIWALA IRON & STEEL ROLLING MILLS,
ADARSH NAGAR AJMER (RAJASTHAN)

Appellant

M/S BANSIWALA IRON & STEEL ROLLING MILLS,

Vs
Respondent

C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of **Final order No.811-813/2011-SM[BR]&S/806-808/2011** dated 4.11.2011 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult **SHRI K.K. ANAND ADV.**
A- 103, DEFENCE COLONY NEW DELHI-24.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi -
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH

Court No.3

E/Stay/916-918/11 in Appeal No.E/759-761/11-SM
(Arising out of Order-in-Appeal No.401(CB)CE/JPR-II/2010 dt.19.11.2010 passed by the CCE(A), Jaipur-II)

Date of Hearing/Decision: 04.11.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s.Bansiwala Iron and Steel Rolling Mills Appellant

Vs.

CCE, Jaipur-II Respondent

Present for the Appellant: Shri K.K.Anand, Advocate
Present for the Respondent: Shri S.K.Bhaskar, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

Final **ORDER NO.** 811-813/2011 SM (BR) + S-806-808/2011 SM (BR)

PER: ARCHANA WADHWA

The issue involved in all the three stay petitions is identical. As such, all the stay petitions are being disposed of by a single order. The total duty involved in all the three stay petitions is Rs.51,682/-.

2. The short issue involved is as to whether the old and used SS plates procured by the appellants and used in the lining of furnace are modvatable capital goods or not?

3. The lower authorities have disallowed the credit on sole ground that goods of chapter 72 are excluded from the definition of the capital goods in terms of Rule 2(a) (A) of Cenvat Credit Rules, 2004. The appellants' contention is that they are covered by Rule 2 (a)(A) (iii) ibid i.e. these plates have to be treated as parts of furnace. For the above proposition, they relied upon the judgement of the Hon'ble Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Ltd.-2007 (214) ELT 510 (Raj.) laying down that steel plates used in workshop meant for repair and maintenance of machinery, which are used for manufacturer of final product are eligible to modvat credit as capital goods. To the similar effect is the judgement of the Tribunal in the case of Oudh Sugar Mills vs. CCE, Lucknow-2008 (226) ELT 113 (Tri.-Del.) wherein an identical objection ~~was~~ raised by the Revenue was not accepted and by placing reliance on the earlier decision of the Tribunal it was held that the plates used as components – section, spare or accessories machinery which are otherwise eligible to modvat credit, ~~which~~ are requires to be held as eligible capital goods for the purpose of credit. In the present case, the said plates are being used for lining of furnace which admittedly falling under chapter 72. As such, the plates used in furnace during the course of which they get consumed are required to be replaced, have to be necessarily held components, spares or accessories of furnace under Rule 2(a) (A) (iii) of Cenvat Credit Rules, 2004. Inasmuch as the issue is covered in favour of the appellants, I, after dispensing with the conditions of pre-deposit of duty and penalty, set aside the impugned order and allow~~ed~~

the appeals with consequential relief to the appellants. The stay petitions as also appeals get disposed of in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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