(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/50 – 52 / 2009 –SM[BR] **Date 30/11/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. **M/S U.P.STATE SUGAR CORPORATION LTD.**
2. **M/S U.P.STATE SUGAR CORPORATION LTD.**
3. **M/S U.P.STATE SUGAR CORPORATION LTD.**

MOHIUDDINPUR,MEERUT (U.P.)

M/S U.P.STATE SUGAR CORPORATION LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 843 – 845 /2011-SM[BR]** dated 19.11.2011 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. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.YUDHISH KUMAR GUPTA &MANOJ KUMAR GUPTA,ADVOCATE
IST FLOOR, UNION BANK BUILDING, KHUNI PUL ,BEGUM BRIDGE ROAD,
MEERUT

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of Hearing:09.11.2011
Date of Decision:09.11.2011

Excise Appeals Nos.E/50-52/2009

(Arising out of common Order-in-Appeal No.177-178/CE/MRT-I/2008 dated 29.09.2008 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

For Approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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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. U.P.State Sugar Corporation Ltd. Appellants

Vs

CCE, Meerut-I Respondent

Appeared for the Appellant: Rep. by none.
Appeared for the Respondent: Rep. by Shri R.K. Verma, DR for the respondent.

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

Final ORDER 843- 845/2011 SM (Br) Dated:9.11.2011

Per Rakesh Kumar:

The only issued involved in these three appeals is as to whether the Welding Electrodes used for repair and maintenance of the plant and machinery are eligible for cenvat credit. The Asstt. Commissioner being of the view that these welding electrodes are not eligible for Cenvat credit either as inputs or capital goods, disallowed the cenvat credit and confirm the cenvat credit demands. The orders of the Dy. Commissioners were upheld by the Commissioner (Appeals), again which, these three appeals have been filed.

2. Though notice for hearing had been issued to the appellant and has been acknowledged by them, today when the matter was called, none representing the appellant appeared. Therefore, this appeal is being decided ex parte.

3. Heard Shri R.K. Verma, ld. DR for the department, who defended the impugned order reiterating the findings of the Commissioner (Appeals).

4. I have carefully considered the submissions of the ld. Departmental Representative and have gone through the case records. The issue involved in this case is no longer res integra and stands decided in favour of the

appellant by the judgements of Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Ltd reported 2008 (228) ELT 517** and also by **Chittisgarh High Court in the case of Ambuja Cements Eastern Ltd. reported in 2010 (256) ELT 690.** Though in the case of **Ramala Sahakari Chini Mills Ltd. Vs. CCE reported in 2010 (260) ELT 321 (SC)**, the issue of Cenvat credit of duty paid on welding electrodes was involved, On perusal of the judgement of the Apex Court, it is seen that what has been referred to the Larger Bench is its judgement in the case of **Maruti Suzuki Ltd. reported in 2009 (240) ELT 641 (SC)** and not the specific issue of eligibility for cenvat credit of welding electrodes used for repair and maintenance of the plant and machinery. At present, on this issue itself, it is the judgement of the Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Ltd.** and the judgement of the Chattisgarh High Court in the case of **Ambuja Cements Eastern Ltd.**, which hold the field. In view of this, the impugned order disallowing the cenvat credit in respect of the welding electrodes used for repair and maintenance of the plant and machinery is not sustainable. The same is set aside. The appeals are allowed.

[order dictated & pronounced in open court]

(Rakesh Kumar)
Member (Technical)

Ckp.