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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/3250/2007 – SM[BR] **Date 07/12/2011**

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S PRAKASH INDS. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 854 / 2011-SM[BR]** 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
M/S PRAKASH INDS. LTD.
GOGAON, RAIPUR, C.G.

2. Adv. / Consult **SHRI RAMESH NAIR ADV.**
"LAKSHMIVIAR" AG- 192,
SCHME NO. 54, VIJAY NAGAR INDORE [M.P.]

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 3250 of 2007-SM

[Arising out of Order-in-Appeal No. 195/RPR-I/ /2007 dated 24.9.2007 passed by the Commissioner, Central Excise (Appeals I), Raipur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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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?	:	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

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Commissioner of Central Excise
Raipur — Appellants

Vs.

M/s. Prakash Industries Ltd. — Respondent

Appearance:
Mrs. R. Jagdev, SDR for the Appellants
Shri Rohit Chaudhary, Advocate for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing/decision : 4.11.2011

Final **ORAL ORDER NO.** 857/2011 SM (BR)

Per Archna Wadhwa (for the Bench):

After hearing both sides, we find that the short issue involved in the present appeal is as to whether the appellants are entitled to the benefit of Cenvat credit in respect of welding electrodes for repair and maintenance of plant and machinery. We find that the issue is no more res integra and stands settled in favour of assessee by various decisions of High Courts in the following cases:

1. Ambuja Cements Eastern Ltd. vs. CCE, Raipur
2010 (256) ELT 690 (Chhattisgarh)

2. Hindustan Zinc vs. Union of India
2008 (228) ELT 517 (Raj.)

3. CCE, Bangalore-I vs. Alfred Herbert (India) Ltd.
2010 (257) ELT 29 (Kar.)

3. Reference is made to the latest decision in the case of Nangganj Sihori Sugar Co.Ltd. vs. CCE, Lucknow vide order dated 435/2011-SM dt.14.7.11 wherein identical submissions made by both sides and the Tribunal observed as under:-

"Learned DR, on the other hand, relied upon the judgement of Division Bench of the Tribunal in the case of Vikram Cement vs. CCE, Indore reported in [2009 (242) ELT 545 (Tri-Del)] and judgement of Apex Court in the case of Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut I reported in [2010 (260) ELT 321 (SC)].

I have considered the submissions made by both sides and perused the records. I find that orders of the adjudicating authority as well as from the submissions of the learned counsel that the issue involved in this case and the disputed fact is *whether duty paid on welding electrodes are used in the factory of appellant for repair and maintenance of plant and machinery is eligible for Cenvat credit. I find that judgements cited by the learned Counsel of Hon'ble High Courts of Chhattisgarh, Rajasthan and Karnataka are directly on the point, wherein it is held that Cenvat credit can be availed on welding electrodes which are used for maintenance of plant and machinery. These judgements are binding on me.*

As regards the decision of the Division Bench cited by the learned DR in the case of Vikram Cement, since judgements of the High Court are of higher judicial fera, hence have more binding force. As regards the Ramala Sahkari Chini Mills (supra), I find that this matter is referred to the Larger Bench of the Hon'ble Supreme Court , this would indicate that at this juncture the judgement of the Hon'ble High Court as referred to hereinabove are binding on me and respectfully following the same, the impugned order is liable to be set aside. The impugned order is set aside."

4. Inasmuch the issue is decided by following the ratio of the above decision, we reject the appeal of the Revenue.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

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