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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/1181/2008 – SM[BR] Date 16/03/2010

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 PANEM STEELS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 330 / 2010 –SM[BR] dated 9.3.2010 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 PANEM STEELS PVT. LTD.
   G.T.ROAD, GHUDHRAULI, CHAUDAGRA, DISTT. FATEHPUR. (U.P.)
2. Adv. / Consult SHRI A.K. DIXIT ADV.
   113/145, SWAROOP NAGAR, KANPUR[U.P.]

3 S.D.R
4 ~~J.C.D.R~~.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

BENCH-SM

Date of Hearing/Decision:09.03.2010

Excise Appeal No.1181/08-SM

[Arising out of Order-in-Appeal No.32-CE/08 dated 29.02.2008 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow].

For approval and signature:

Hon'ble Mr.S.K. Gaule, 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 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?	

Commissioner, Central Excise, Lucknow ...Appellant

Vs.

M/s. Panem Steels (P) Ltd. , Fatehpur ... Respondent

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

Coram: Hon'ble Mr. S.K.Gaule, Member (Technical)

Final **ORDER NO.** 330/2010 SM (BR) **DATED:09.03.2010**

PER: S.K. Gaule

Heard both sides. The revenue is in appeal against the order of Commissioner (Appeals) No.32-CE/08 dated 29.02.2008 whereby the Cenvat credit has been allowed on welding electrodes used by the respondent to correct the manufacturing defects so that the product marketable to the consumers. The contention of the appellant is that welding electrodes are used for filling of the ingots and repair of pipes and tubes. Therefore, they do not qualify as inputs as per Rule

2 (g) / 2(k) respectively of the Cenvat Credit Rules, 2002/2004. They placed reliance on Tribunals decision in the case of Vikram Cement vs. Commissioner of Central Excise, Indore reported in 2009 (242) E.L.T. 545 (Tri.- Del.).

2. The contention of the respondent is that they have used the welding electrodes in or in relation to the manufacturing of final product. They have correctly availed the credit in terms of Rule 2(k) of Cenvat Credit Rules, 2002. They ~~are~~ also placed reliance on CCE & C, Guntur vs. Andhra Cements Ltd. reported in 2009 (92) RLT 357 (Cestat- Ban.)

3. I find that the respondent have claimed Cenvat Credit on welding electrodes as inputs. The contention of the appellant is that welding electrodes are used for filling of the ingots and repair of pipes and tubes. Therefore, they fall under the definition of "inputs". The Tribunal in the case of Kisan Sahkari Chini Mills Ltd. vs. Commissioner of Central Excise, Meerut vide Final order No.1268/09-Ex dated 03.11.2009 in appeal No.E/625/05-Ex. held that "*in case a party is entitled to avail the Cenvat credit in relation to the duty paid on an item by establishing the same as the inputs, even though, initially the claim was on the basis that the same was the capital goods. A party can be allowed to shift such claim. However, in the case in hand, the fact remains that there has been already final adjudication on the point as to whether welding electrode used in the process of maintenance and repairs could be input or not and decision in that regard is clearly against such claim by the assessee in the Vikram Cement case. Being so, the appellants would not be entitled to claim the welding electrodes as the*

inputs to avail cenvat credit. The law in that regard stands clearly pronounced by this Tribunal in the said case. In the facts and circumstances of the case, it is not necessary to consider various decisions sought to be relied upon at this stage. Suffice to say that all the issues in relation to the claim that the items are the capital goods within the meaning of the said expression under said rules being kept open, and to be decided by the adjudicating authority in accordance with provisions of law on the basis of the materials available on record and after hearing the parties, the matter could be disposed of by setting aside the impugned order and remanding the matter for the above purpose."

4. The facts of the case are similar to the case which was before the tribunal in the case of Vikram Cement (supra). Therefore, the matter requires reconsideration. In these circumstances, the impugned order of Commissioner (Appeals) is set aside and the case is remanded to the Lower Adjudicating Authority to consider the issue afresh, in above terms, after affording opportunity of hearing to the assessee. The appeal is disposed of by way of remand.

[Dictated & Pronounced in the open Court].

(S.K. GAULE)
MEMBER (TECHNICAL)

Anita