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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/344 - 345 /2007 , E / 845 – 847 / 2007 –SM[BR] Date **20/12/2010**

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

To :
L.H.SUGAR FACTORIES LTD.

THE GENERAL MANAGER, L.H.SUGAR FACTORIE
LTD. PILIBHIT.

**L.H.SUGAR FACTORIES LTD.** Appellant

Vs

**C.C.E, MEERUT-II** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1444 – 1448 / 2010-SM[BR] dated 20.10.2010 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-II**
CCE, MEERUT-II, OPP. SHAHED
PARK (NEAR SHOK KILAT),
DELHI ROAD, MEERUT (U.P.)
2. Adv. / Consult
**MR.KAPIL VAISH**
B-51, BUTLER PLAZA, 95, CIVIL
LINES, BAREILLY.
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 Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

2. L.H.SUGAR FACTORIES LTD.
THE GENERAL MANAGER,
L.H.SUGAR FACTORIE LTD.

[3] M/S L.H.SUGAR FACTORIES LTD.
CIVIL LINES, PILIBHIT,DISTT.BAREILLY
[4] M/S L.H. SUGAR FACTORIES LTD.CIVIL LINES PILIBHIT
DISTT.BAREILLY
[5] M/S L.H.SUGAR FACTORIES LTD.CIVIL LINES PILIBHIT BAREILLY

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No. 344-345/07-SM

(Arising out of order in appeal No.232-235/CE/Appl/MRT.II/06 dated 22.12.06 passed by the Commissioner of Central Excise (Appeals), Meerut)

Date of Hearing: 20.10.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see 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?

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M/s L.H. Sugar Factory Ltd — Appellants

Vs

CCE, Meerut-II — Respondent

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E/Appeal Nos. 845-847/07-SM

CCE, Meerut-II — Appellants

Vs

M/s L.H. Sugar Factory Ltd — Respondent

Appeared for the Appellant: Shri Kapil Vaish, C.A.
Appeared for the Respondent: Shri Anil Khanna, SDR

Coram: **Hon'ble Shri Ashok Jindal ,Member (Judicial)**

Final ORDER - 1444 - 1448/2010 SM (Br)

Per Ashok Jindal:

These appeals are filed by the assessee against the order of denial of Cenvat credit on Welding Electrodes which were used for repair and maintenance of their plant and machinery. On the other hand, Appeal Nos. 845/07 to 847/07 are filed by the Revenue against the impugned order wherein the assessee was allowed to take Cenvat credit on Angles, HR Coils, Shapes, Sections, etc.

2. The brief facts of the case are that the assessee is a manufacturer of sugar. They availed cenvat credit on welding electrodes as capital goods as the same were used in repair and maintenance of their plant and machinery which are covered under the definition of capital goods. They also availed cenvat credit on Steel plates, HR sheets, Section etc. which were used for repair of their plant and machinery which has become obsolete.

3. The adjudicating authority confirmed the demand along with interest and equivalent amount of penalty on the assessee. Aggrieved from the said orders, the assessee filed appeals before the Commissioner (Appeals) who allowed the cenvat credit on Steel plates, HR shapes and sections etc but disallowed cenvat credit availed by the assessee on welding electrodes. Aggrieved from the said order, both the parties are in appeal before this Tribunal.

4. Shri Kapil Vaish, Chartered Accountant appearing on behalf of the assessee submits that cenvat credit on welding electrodes which are used for repair and maintenance of plant and machinery has been

allowed by the Hon'ble High Court of Chattisgarh recently in the case of Ambuja Cements Eastern Ltd Vs CCE Raipur reported in 2010 (256) ELT 690 (Chatt) and the same view has been taken by the Hon'ble High Court of Karnataka in the case of CCE Bangalore Vs Alfred Herbert (India) Ltd reported in 2010 (257) ELT 29 (Kar). Accordingly, they are entitled to avail cenvat credit on welding electrodes which are used for maintenance and repair of plant and machinery as capital goods or inputs. He took a preliminary objection to the appeals filed by the Revenue saying that a proper approval of Review Committee has not been obtained by the Department before filing the appeal before this Tribunal as the Review consists of two Commissioners but the Review has been made only by one Commissioner who was holding additional charge of Second Commissioner. Hence it is not the decision of the Committee of two Commissioner and it is decision of one Commissioner and hence appeal is not maintainable before this Tribunal as per Section 35-B of the CEA, 1944.

5. On the other hand, learned DR submitted that the Hon'ble Apex Court in the case of SAIL reported in 2008 (229) ELT A-127 (SC), the Apex Court disallowed the cenvat credit on welding electrodes which are used for repair and maintenance of machinery and same view has been dealt with by the Hon'ble President of this Tribunal in the case of Oswal Overseas Ltd Vs CCE Meerut-II reported in 2001 (254) ELT 338 wherein it was held that electrodes are consumable items which lost their identity and existence in their use, items could not be accessories and are not covered under Rule 2(a)(A) of Cenvat Credit Rules, 2004.

6. With regard to the appeals filed by the Revenue, he submitted that there is proper order of the Committee of Commissioners as the Commissioner of Central Excise Meerut-I was holding the charge of Meertu II which forms the Committee to review the impugned order. As the Commissioner of Central Excise Meerut II was transferred and Commissioner of Central Excise, Meerut I was having the additional charge of CCE Meerut II. Hence he has taken the decision as Committee of two Commissioners. Hence there is a proper authorization of the Review Committee of two Commissioners.

7. Heard both the sides. On a careful examination of the submissions and reliance placed by both the parties, I find that first I will deal with the issue of welding electrodes. The learned DR submitted that in the case of SAIL, the Hon'ble Apex Court has held that Cenvat credit on electrodes is not available. But I have seen the decision of the Hon'ble Apex Court. In that case, the decision of the Apex Court involving the period prior to 2000 wherein the earlier provision of modvat credit rules were available and in the case of Alfred Herbert (India) Ltd, the Hon'ble High Court of Karnataka has dealt with the issue and held that the decision of SAIL is not applicable after 2000 when the amendment in the Cenvat Credit Rules 2000 took place. The decision of the Ho'ble President of this Tribunal is prior to the decision of the Hon'ble Karnataka High Court and the Hon'ble Chattisgarh High Court. Hence following the judicial discipline, I am bound to follow the decision delivered by the High Court. Moreover, in view of the above discussion, the assessee is entitled to availament of

cenvat credit on welding electrodes, which are being used in maintenance of plant and machinery as capital goods or inputs.

8. With regard to the fact as to whether proper permission of the Committee of two Commissioners has been obtained or not, as per Section35(B)(I)(b)(clause ii) itself provide that every Committee constituted under Section (i) was consisted of two Commissioner as the case may be. According to the said provision, there must be two persons or two Commissioners or Chief Commissioners to review the order placed before them and to arrive at a decision whether the appeal is to be filed or not. In this case, although the Commissioner of Central Excise Meerut- I was holding the additional charge of Commissioner of Central Excise Meerut- II but that cannot be termed as a Committee of Commissioners constituted in the provisions of law. Hence the preliminary objection taken by the learned Consultant for the assessee is a valid objection. Hence the appeals filed by the Revenue are not proper and correct in view of the law as there is not proper permission from the Committee of Commissioners to file the appeals before this Tribunal.

9. Hence in view of the discussion, appeals field by the assessee are allowed and appeals filed by the Revenue are rejected.

(ASHOK JINDAL)
Judicial Member

MPS*