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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/1280 – 1284 / 2006 -SM[BR] Date 26/08/2010

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

To :
M/S U.G.SUGAR & IND LTD
SEOHARA,DISTT.BIJNOR,(UP)

M/S U.G.SUGAR & IND LTD Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 905 – 909 / 2010-SM[BR] dated 24.8.2010 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
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,GHAZIABAD.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
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   SEOHARA, DISTT. BIJNOR (U.P.)
5. M/S U.G.SUGAR & INDUSTRIES LTD.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeals Nos.E/1280-1284 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.19-25-CE/MRT-II/2006 dated 31.01.2006 passed by the Commissioner of Central Excise (Appeals),Meerut-II]

Date of Hearing:12.05.2010

Date of decision : 24 .08.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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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M/s. U.G. Sugar & Industries Ltd. ...Appellants
(Rep. by Shri Kamaljeet Singh, Advocate)

Vs.

CCE, Meeerut-II ...Respondent
(Rep. by Shri S.K. Bhaskar, JDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 905-909/2010 SM (BR)/Dated:12.05.2010

Per M. Veeraiyan:

These appeals arise out of common order-in-appeal no.19-25-CE/MRT-II/2006 dated 31.01.2006.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are a manufacturers of V.P.Sugar and molasses and are availing facility of Cenvat Credit on inputs and capital goods in terms of Rule 3 of Cenvat Credit Rules, 2002. Show cause notices were issued periodically covering the periods from March, 2003 to November, 2004 proposing denial of Cenvat credits on the following items and proposing penalties:-

(a) Welding Electrodes (8311)

(b) M.S. Plates, Shape & Section, H.R. Plate, Steel Sheets, Article of Iron Steels, Roof sheets of iron, S.S. Plates, Carbon Steel bar, Flat Bar, Channel, Angles, H.R. Slide, Slitting etc.

(c) CAF Jointing Sheets, Asbestos packing, Steam Jointing, Jointing Sheets, D.E. White Metal, Metalic Graphite, Style Packing etc.

(d) White lead

(e) Winding Wire, Winding, Red led and Break Liner, Coils, Copper Wire Aluminium Wire Copper Sheet, etc.

(f) Component of P.D. Pumps.

4. The Original Authority passed the orders denying the Cenvat credit, ordering recovery of equal amount of duty along with interest and imposing equal amount of penalty (show cause notices included proposal for denial of credit on some more items, which were allowed by the Original Authority. The list mentioned above relates to the items on which the credit stands denied by the Original Authority and upheld by the Commissioner (Appeals).

5.1 Ld. Advocate appearing for the appellants referring to the findings of the Commissioner (Appeals) item-wise submitted the following:-

(a) **Welding Electrodes:**

Welding Electrodes were used for fabrication of tubes and pipes and various equipments like boilers and also for the repairs of these equipments and tube and pipes as held by the Commissioner (Appeals). In such a situation, the Cenvat credit on Welding Electrodes is eligible as input as held by the Hon'ble High Court of Chhattisgarh vide decision dated 19th April, 2010 reported in 2010 –TIOL-309-HC-CHHATTISGARH-CX.

(b) **M.S. Plates, Shapes and Sections, H.R.Plates, Steel Sheets, Articles of Iron Steel, Roof sheets of iron, S.S. Plates, Carbon Steel Bar, Flat Bar, Channel, Angles, H.R. Slide Slitting, etc.**

The authorities below while noting that some of these items were used for fabricating items used for fitment into capital goods and the rest were used for making sheets and various staging/supporting structures, they denied entire credit. The authorities below have not gone into the actual use of these items. He submits that the decision of the Larger Bench denies credit only in respect of supporting structures and not in respect of items used for fabricating items for fitment into capital goods. In fact, he submits that the reference to the structure in the Larger Bench should be construed as building structures and not structure to supporting machinery.

(c) **CAF Jointing Sheets, Asbestos packing, Steam Jointing, Jointing Sheets, D.E. White Metal, Metalic Graphite, Style Packing etc.,**

All these items are referred to as jointing materials or also known as packing materials. These are primarily used for packing of steel line, etc. for prevention of leakage. These items are eligible for the credit as held by the

Tribunal in their own case vide Final Order No.309-310 of 2008-SM (BR) dated 12.02.2008 in Appeal No.2860 of 2006.

(d) **White Lead**

The same is also a jointing material and the credit is available for the reason mentioned against (C).

(e) **Winding Wire, Winding, Red led and Break Liner, Coils, Copper Wire, Aluminium Wire Copper Sheet etc.,**

These goods are eligible for Cenvat credit as held in their own case by the Tribunal vide order dated 12.02.2008 cited supra.

(f) **Component of P.D. Pumps**

PD Pumps are eligible for Cenvat credit and since components of P.D. Pumps are to be treated as capital goods, the cenvat credit is available. He relies on the decision of the Tribunal in the case of Commissioner of Central Excise Vs. Punjab Chemical & Pharm. Ltd. reported in 2000 (116) ELT 461 (Tribunal).

5.2 He also submits that as the dispute relates to interpretation of legal provisions of Cenvat Credit Rules, no mens rea can be attributed to the appellants and there is no justification for imposition of penalty.

6.1 Ld. DR made the following item-wise submissions:-

(a) **Welding Electrodes**

He relies on the decision of the Tribunal in the case of Vikram Cement reported in

(b) **M.S. Plates, Shape & Section, H.R. Plate, Steel Sheets, Article of Iron Steels, Roof Sheets of Iron, S.S. Plates, Carbon Steel bar, Flat Bar, Channel, Angels, H.R. Slide Slitting etc.:**

He submits that the items referred to are basically used for fabricating supporting structures and the same are not eligible for credit as held by the Larger Bench of the Tribunal in the case of Vandana Global Ltd..

(c) **CAF Jointing Sheets, Asbestos packing, Steam Jointing, Jointing Sheets, D.E. White Metal, Metalic Graphite, Style Packing etc.**, and

(d) **White Lead**

He submits that the decision of the Tribunal relied upon by the ld. Advocate refers to the Jointing Sheets whereas in the present case several items are involved such as CAF Jointing Sheets, Asbestos Packing, Steam Jointing, Jointing Sheets, D.E. White Metal, Metalic Graphite, Style Packing, White Lead and these have not been individually examined in the light of the decision of the Tribunal dated 12.02.2008

(e) **Winding Wire, Winding, Red led and Break Liner, Coils, Copper Wire Aluminium Wire Copper Sheet etc.**

He submits that these items are used only for the purpose of repair and maintenance and may not be eligible for Cenvat credit as they are not used in or in relation to the manufacture of the final products.

(f) **Component of P.D. Pumps**

He submits that P.D. Pumps are excluded from the definition of capital goods during the relevant period. Components of P.D. Pumps cannot be treated as capital goods and Cenvat credit extended.

6.2 Ld. DR also relies upon the decision of the Tribunal in the case of J.K. Cement Works Vs. CCE, Jaipur reported in 2007 (211) ELT 235.

7. I have carefully considered the submissions from both sides and perused the records. The dispute relates to eligibility of credit on several categories of impugned items and therefore, the decision is given category wise/item wise.

Welding Electrodes

8.1 In the present case, welding electrodes are undisputedly used either in fabrication of tubes and pipes and various other equipments or for repair of these, tubes, pipes and equipments. The Chhattishgarh High Court in the case of Ambuja Cements Eastern Ltd. and others cited supra has considered the issue as to whether "welding electrodes used in repair/maintenance of plant and machinery can be considered as input as defined under Rule 2(g) of the Cenvat Credit Rules, 2002" and answered the question in favour of the assessee. The Hon'ble High Court held that decision of the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant vs. C.C.E., Raipur – 2003 (159) ELT 553 is not a good law in view of the decision of the Hon'ble High Court of Rajasthan in the case of Hindustan Zinc Ltd. reported in 2008 (228) ELT 517 which approved the ratio of the Larger Bench of the Tribunal in the case of Jawahar Mills Ltd. – 2001 – 1999(108) ELT 47 and disapproved the decision of the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant cited supra. The Hon'ble High Court also held that the decision of the Kolkatta Bench of the Tribunal in the case of SAIL vs. C.C.E., Ranchi - 2008 (222) ELT 233 relying on the decision of the Larger Bench in the case of Jayee Rewa Plant cannot be held to have been approved by the Hon'ble Supreme Court even though the SLP filed by the party against the said decision has been dismissed. In view of the above, as the

Hon'ble High Court of Chhattisgarh has held that welding electrodes used in repair and maintenance of plant and machinery are inputs as defined under Rule 2(g) of the Cenvat Credit Rules, 2002. In view of the above decision, appeal of the party in so far as the same relates to welding electrodes deserve to be allowed.

M.S. Plates, Shapes and Sections, H.R. Plates, Steel Sheets, Articles of Iron Steel, Roof sheets of iron, S.S. Plates, Carbon Steel Bar, Flat Bar, Channel, Angles, H.R. Slide Slitting etc.

8.2.1 The Larger Bench of the Tribunal in the case of Vandana Global Ltd. considered the following questions:

(a) Whether the term "capital goods" can include plant, structures embedded to earth?

(b) Whether the goods like angles, joists, beam, channels, bars, flats which go into fabrication of such structures can be treated as 'inputs' in relation to their final products as inputs for capital goods, or none of the above?

(c) Whether the credit can be allowed in respect of goods like angles, joists, beam, channels, bars, flats which go into fabrication of such structures and plant?

Following are the salient features of the decision of the Larger Bench :-

a) It disapproved the decision of the Tribunal in the case of Bhushan Steel and Strips Ltd. vs. CCE, Raigad [2008 (223) ELT 517 (Tri-Mum)] which allowed credit on cement and steel used for providing foundation of machines, structures, tunnels, trenches, cellars and factory building essential for steel rolling mills and also allowed credit on roofing material;

b) It endorsed the decision of the Tribunal in the case of Vikram Cement vs. CCE, Indore [2009 (242) ELT 548] wherein it has been held that

"If the inputs were to include every product under the sun which is somehow related to the premises where the manufacturing process goes on, then there is no need to provide a definition of the term capital goods and, therefore, the acceptance of the contention on behalf of the appellants would render the definition of the term the capital goods to be redundant as well as the provisions relating to extending the benefit of Cenvat credit to the capital goods."

c) It reiterated the need for the nexus between inputs and final products in or in relation to process of manufacture as a condition for eligibility to credit as held by the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. vs. CCE [2009 (240) ELT 641 SC].

d) It held that amendment to Explanation 2 to Rule 2(k) of Cenvat Credit Rules, 2004 is a clarificatory amendment and that the same is applicable retrospectively.

e) It was also held that the foundation and supporting structures are neither inputs nor components, spares and accessories of machinery, nor have they been listed for such inclusion in the definition of capital goods.

With the above findings and observations, the question referred to Larger Bench were answered as follows:

"49. In the light of the foregoing findings, we answer the questions referred to the Larger Bench as follows:-

(a) The terms "capital goods" has been defined in the Cenvat Credit Rules, which in turn have been framed under the rule making powers conferred under Section 37(2) of the Act. The said Section refers to credit of duty paid on goods used in, or in relation to the manufacture of excisable goods. Hence, 'capital goods' defined in the Cenvat Credit Rules in the context of providing credit of duty paid, have to be excisable goods. Whether a particular plant or structure embedded to earth can be considered as excisable goods or not has to be determined in the light of the decisions of the Hon'ble Supreme Court on the issue, which is no longer res integra.

(b) Goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated either as inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the Cenvat Credit Rules for the impugned period."

8.2.2 The appellants in their appeal memorandum have clearly submitted that the above items were used for fabrication of structurals in the factory for providing shade to the machinery and for making platform for having access to the machinery. Under these circumstances, their claim that these are in the nature of accessories to the machines which are ~~covered~~ capital goods cannot be accepted, in the light of the decision by the Larger Bench of the Tribunal in the case of Vandana Global Ltd.

8.2.3 In view of the above, the appellants are not eligible for the credit in respect of the above items.

CAF Jointing Sheets, Asbestos packing, Steam Jointing, Jointing Sheets, D.E. White Metal , Metalic Graphite, Style Packing etc. and White Lead

8.3 It is noticed that white lead is used for sealing the joint, asbestos packing is used in sealing joint in tubes and pipes and for providing insulation. White metal is used to smooth liner in bearing ~~pump, turban~~ of turbine and steam engine. It is further noticed that in the appellant's own case, similar items have been allowed the credit vide Final Order No.309-310/08 dated 12.2.08 in Appeal No.E/2860-2861/06 relating to the earlier period. It has not been shown that the said order of the Tribunal has been set aside or stayed by a Higher forum. In view of the above, it is held that the appellants are eligible for the credit on these items.

Winding Wire, Winding, Red lead and Break Liner, Coils, Copper Wire, Aluminium Wire Copper Sheet etc.

8.4. The appellants have claimed that in respect of these items they have been allowed the credit by the Tribunal's order dated 12.2.2008 in their own case. On perusal of the said order, it is noticed that the credit has been allowed only in respect of copper wires. Their claim that other materials like coils , aluminium wire copper sheets, the break liner and red lead does the same function have not been substantiated. However, it is noticed that there is clear finding about the exact use of these items by the authorities below. Therefore, the credit has to be allowed only in respect of winding wires.

Components of P.D. Pumps

8.5 The submission of the learned DR that during this period, P.D. Pumps are excluded from the definition of capital goods and therefore, the components of said P.D. pumps cannot be treated as capital goods deserves acceptance, as the appellants have not contradicted this factual position. Therefore, the credit is not available to them on these items.

9. In view of the above, appeals are disposed of as follows:-

a) Cenvat credit is allowed on welding electrodes, CAF Jointing Sheets, Asbestos packing, Steam Jointing, Jointing Sheets, D.E. White Metal, Metalic Graphite, Style Packing etc. and White Lead and Winding Wires. The orders of authorities below to the extent of denying credit on these items are set aside.

b) Disallowance of credit on other items are upheld.

c) The original authority shall ~~revoke~~ rework the demand accordingly.

d) In the facts and circumstances of the case, no penalty is warranted and the same is set aside.

(Pronounced in the open Court on 24-08 ~~07~~.2010)

(M. Veeraiyan)
Member (Technical)

Ckp.