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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/472 – 473 / 2009, E / 677 & 681 / 2009 –SM[BR] Date 09/11/2010

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

To :
(1-2) M/S BAJAJ HINDUSTHAN LTD.
UNIT: KHAMBARKHERA, DISTT. LAKHIMPUR-KHERI, (U.P.)

M/S BAJAJ HINDUSTHAN LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1169 – 1172 / 2010-SM[BR] dated 26.10.2010 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.PRADEEP KUMAR MITTAL
   171, CHITRA VIHAR, DELHI-110092
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
15. Guard file

Assistant Registrar
(SM Appeal Branch)

(1-2) M/S BAJAJ HINDUSTAN LTD
KHAMBHAR KHERA, DISTT. LAKHIMPUR KHERI (U.P.)

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

E/Appeal No.472-473/09-SM

(Arising out of order in appeal No. 203, 205/CE/LKO/2008 dated 16.12.2008 passed by the Commissioner of Central Excise (Appeals), Lucknow).

Date of Hearing: 11.10.2010

Date of Pronouncement: 26.10.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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?

M/s Bajaj Hindustan Limited — Appellants

Vs

CCE, Lucknow — Respondent

E/Appeal No. 677 & 681/2009-SM

CCE, Lucknow — Appellants

Vs

M/s Bajaj Hindustan Limited — Respondent

Appeared for the Appellant: Shri P.K. Mittal, Advocate
Appeared for the Respondent: Shri S.K. Bhaskar, DR

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

Final ORDER 1169-1172/2010 SM(BR)

Per Ashok Jindal:

Appeal Nos. 472-473/2009 have been filed by the appellants against the confirmation of demand and Appeal Nos. 677 & 681/2009 have been filed by the Revenue against the dropping of the penalty by the lower authority.

2. The brief facts of the case are that the appellants are engaged in the manufacture of V.P. sugar and molasses. They are availing Cenvat credit on duty paid on inputs and capital goods received in their factory for manufacture of the final product. The appellants availed Cenvat credit on welding electrodes as capital goods which are used in maintenance and repair of plant and machinery installed in their factory. It was observed that the welding electrodes did not qualify either as input or capital goods in terms of Rule 2 of Cenvat Credit Rules, 2002/Cenvat Credit Rules 2004 for availment of Cenvat credit of duty paid thereon. Accordingly, the adjudicating authority disallowed the credit on welding electrodes and imposed penalty on the appellants. The appellants preferred appeals before the lower appellate authority who confirmed the demand but dropped the penalty and interest holding that the matter involves interpretation of Rules. Aggrieved from the orders of the lower appellate authorities, both the parties are in appeals (appellant for confirmation of demand and Revenue for dropping the penalty and interest).

3. The learned Advocate for the appellants submits that the issue has been framed by the adjudicating authority in the adjudication order that whether the welding electrodes used for fabrication/installation of capital goods which are further used for manufacture of final product i.e. Sugar and molasses. In this case, it is no doubt that these welding electrodes were being used for manufacture of capital goods i.e. Plant and machinery. Hence they are entitled for Cenvat credit on these welding electrodes. In support of his contention, he placed reliance in the case of Hindustan zinc Ltd Vs Union of India reported in 008 (132) ECC 3 wherein it has been held that welding electrodes are eligible for Cenvat credit both as capital goods as well as inputs. Hence the appellants are entitled for Cenvat credit on these welding electrodes.

4. On the other hand, learned DR submitted that it is true that as per Explanation 2 of Cenvat Credit Rule 2(a) of Cenvat Credit Rules 2004, the inputs used for fabrication of capital goods are entitled for Cenvat credit but in Appeal No. 473 of 2009 as Annexure to show cause notice, items mentioned at Sl Nos. 5, 14, 15, 16, 19, 20, 25, 27, 28, 41, 42, 45, 46 and 47 were used in fabrication of structures to the machinery. The credit involved in these items are not entitled for cenvat credit as held by the Larger Bench of this Tribunal in the case of Vandana Global reported in 2010(253) ELT 440 (LB). He further submitted that as the appellants have wrongly taken the credit on welding electrodes, hence penalties and interest are payable by the appellants.

5. Heard both the sides.

6. I have carefully gone through the submissions made by both the sides and observe that the issue in this case is whether the welding electrodes used for fabrication or installation of capital goods which are further used for manufacture of final product, qualify as input or capital goods or not ? It is no doubt that the appellants are entitled for availment of Cenvat credit on welding electrodes which have been used for fabrication/installation of the plant and machinery which are capital goods as per Rule 2-K of Cenvat Credit Rules, 2004, explanation 2, as held by the Hon'ble High Court of Rajasthan in the case of Hindutan Zinc Ltd (supra) but the appellants are not entitled for the Cenvat credit on welding electrodes which are used for fabrication of structural supports to the machinery as held by the Larger Bench of this Tribunal in the case of Vandana Global (supra) wherein it was held that structures do not qualify as capital goods. Hence the demand on welding electrodes which are being used for fabrication of supporting structures is confirmed and the demand on welding electrodes used for fabricating of plant and machinery is dropped.

7. With regard to penalty, as rightly held by the lower appellate authority that issue involved is interpretation of the Statute, penalty is not leviable in these cases. Accordingly, the penalties are not liable to be imposed.

8. With regard to interest, interest is leviable for delayed payment as held by the Hon'ble Supreme Court in the case of SKF Ltd. Accordingly, the appellants are liable for payment of interest on

demand confirmed for the use of welding electrodes for fabrication of supporting structures.

9. In the result, Appeal No.472/09 is allowed in full. Appeal No. 473/09 is remanded back to the original authority to quantify the demand as discussed above and the appeals of the Revenue are disposed of holding that interest is payable but penalty is not leviable.

10. With these observations, all the four appeals are disposed of with consequential relief, if any.

(Pronounced on......26.10.2010......)

(ASHOK JINDAL)
Judicial Member

MPS*