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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/184 /2009 – SM[BR] Date 01/12/2010

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

To :
M/S TRIVENI ENGINERING & INDUSTRIES LTD.
SUGAR UNIT- CHAPNA, TEHSIL- HASANPUR, DISTT.
JYOTIBA PHULE NAGAR. (U.P.)
M/S TRIVENI ENGINERING & INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1323 / 2010-SM[BR] dated 16.11.2010 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.R. KRISHNAN
297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

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)

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

Excise Appeal No.184 of 2008
(Arising out of Order-in-Appeal No.119-CE/MRT-II/2008 dated 30.9.2008 passed by the CCE (A), Meerut-II)

Date of Hearing/Decision: 16.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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?	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

Triveni Engineering & Industries Ltd. — Appellant

Vs.

CCE, Meerut-II — Respondent

Present for the Appellant : Shri R.Krishnan, Advocate
Present for the Respondent: Shri Anil Khanna, DR

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

Final **ORDER No.** 1323/2010 SM (BR)

PER: M.VEERAIYAN

This is an appeal against the Order-in-Appeal No.119-CE/MRT-II/2008 dated 30.9.2008 of the Commissioner (Appeals), by which denial of credit amounting to Rs.4,73,337/- and consequently the demand of duty alongwith interest was upheld.

2. Heard both sides.

3. The appellants set up their sugar mills which commenced production from the December, 2006. The appellants filed their ER-1 return first time for the month of November, 2006 wherein they indicated the production and clearance of the goods as nil but mentioned the details of credit taken on inputs/capital goods. The dispute relates to the credit taken on welding electrodes during the period from April, 2006 to June, 2007. A show cause notice dated 15.1.08 proposing the demand of duty alleging that the welding electrodes did not qualify to be called as inputs for capital goods for manufacture of sugar and molasses as defined under Rule 2(k) of the Cenvat Credit Rules, 2004 and proposing demand. The original authority confirmed the demand alongwith interest and imposed equal amount of penalty. The Commissioner (Appeals) upheld the order of the original authority so far as the same related to demand of duty and interest but set aside the penalty.

4. Learned Advocate for the appellants submits that the definition of inputs under Rule 2(k) of Cenvat Credit Rules, 2004 and explanation 2 to the said definition are wide enough to consider the impugned items as inputs. It has been explained that any inputs used in or in relation to the manufacture of capital goods which are used in the manufacture of final products would be treated as inputs. As the welding electrodes in the present case, have been used for fabricating mill structures like boiler, juice pipe lines, steam pipe lines vertical crystilizer, storage tank etc. they are eligible for credit as inputs. He also submits that after commencement of the operation in December, 2006, it is possible that some quantity of steel welding electrodes were used for the purpose of maintenance and repairs. Even in such cases, the credit is available in view of the

decision of the Hon'ble High Court of Chhattisgarh reported in 2010 (250) ELT 690.

5. Learned SDR reiterated the findings and reasoning of the Commissioner (Appeals). He also submits that in appellant's own case, the Larger Bench of the Tribunal relating to their other units reported in 2005 (186) ELT 158 has held that the welding electrodes cannot be claimed as capital goods.

6. Learned Advocate in a rejoinder submits that the present claim is that welding electrodes used in the manufacture of capital goods and used for repairs and maintenance should be treated as inputs.

7. I have carefully considered the submissions made from both sides and perused the records. The definition of inputs under Rule 2(k) of Cenvat Credit Rules,2004 and the explanation 2 read as under:

"2(k) "input means –

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared alongwith the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam in or in relation to manufacture of final products or for any other purpose, within the factory or production.

Explanation -1 ---

Explanation-2 – Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer."

8. The appellants have used upto December, 2006 the welding electrodes in connection with manufacture of capital goods, welding electrodes so used should be held to be inputs in terms of Explantion-2 to Rule 2(k) of the Cenvat Credit Rules. Further, in the light of the decision of the Hon'ble High Court of Chhattisgarh, the welding electrodes whcih are used in or in relation to the maintenance and repairs are to be held as inputs. In respect of either use, the welding electrodes are thus to be treated as inputs.

9. In view of the above, the appellants have made out a case for interference and accordingly the order of the Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief as per law.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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