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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/2140/2008 – SM[BR] Date 02/12/2010

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

To :
M/S KISAN SAHKARI CHINNI MILLS LTD.

NANAUTA, SAHARANPUR.

M/S KISAN SAHKARI CHINNI MILLS LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1335 / 2010-SM[BR] dated 22.11.2010 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 I

   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult

   MR.VIKRANT KACKRIA

   509, SEC-7,PANCHKULA, HARYANA

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 2140 of 2008-SM

(Arising out of Order-in-Appeal No. 143/CE/MRT-I2008 dated 18.07.2008 passed by the Commissioner of Customs & Central Excise (Appeals-I), Meerut).

DATE OF HEARING : 30.09.2010
DATE OF DECISION : 22.11.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT

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 ?	No.
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

M/s Kisan Sahkari Chinni Mills Ltd. .... **Appellants**
(Rep. by Sh. S. Yadav, Adv.)

VERSUS

CCE, Meerut-I .... **Respondents**
(Rep by Sh. K.P. Singh, DR.)

CORAM : HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT

Final **ORAL ORDER NO.** 1335/2010 SM (BR)

PER SHRI JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the Departmental Representative for the respondents. This appeal arises from order dated 18th July, 2008 passed by the Commissioner (Appeals), Meerut, whereby the appeal filed by the appellants against the order of the adjudicating authority has been dismissed. The Assistant Commissioner, Saharanpur, by his order dated 31st December, 2007 had disallowed the claim of the appellants for Cenvat (Modvat) Credit amounting to Rs. 19,298/- on the welding electrodes and had ordered recovery of the same along with interest.

2. The appellants are engaged in the manufacture of sugar and molasses classifiable under Chapter Heading 17.01 and 17.03 respectively of the Central Excise Tariff Act, 1985. They are also availing Cenvat Credit facility in relation to the duty paid on the inputs and capital goods. During the scrutiny of modvat documents for the month of October, 1999, it was revealed that the respondents had availed the inadmissible credit amounting to Rs. 19,297.53 inputs on the duty paid on welding electrodes even though the welding electrodes were used for maintenance of the plant and not used in or in relation to the manufacture of the final products. Show cause notice dated 10th February, 2000 was issued which was contested by the appellants claiming that the welding electrodes was used as inputs in or in relation to the manufacture of the final products. The contention was rejected by the adjudicating authority and the appeal filed against the said order also failed.

3. Placing reliance in the decision of the Rajasthan High Court in the matter of **Hindustan Zinc Ltd. vs Union of India,** reported in 2008 (228) ELT 517 (Raj.), of the Tribunal in the matter of **J.K. Cement Works vs CCE, Jaipur,** reported in 2010 (252) ELT 249, of the Chhattisgarh High court in the matter of **Ambuja Cements Eastern Ltd. vs CCE, Raipur,** reported in 2010 (256) ELT 690 (Chhattisgarh), and of the Karnataka High Court in the matter of **CCE, Bangalore-I vs Alfred Herbert (India) Ltd.,** reported in 2010 (257) ELT 29 (Kar.), the learned advocate for the appellants submitted that even assuming that the appellants were not entitled to avail the credit in relation to the welding electrodes as the inputs, certainly the appellants were entitled to avail the same as the capital goods considering the law laid down in that regard by the Rajasthan High Court and the decision of the Chhattisgarh High Court and the Karnataka High Court. On the other hand, the Departmental Represnetative referring to the decision of the Tribunal in the matter of **Vikram Cement vs CCE, Indore,** reported in 2009 (242) ELT 545, submitted that, the law in this regard is well settled and the appellants are not entitled to claim the credit in relation to the duty paid on the welding electrodes.

4. The impugned order clearly holds that the issue of admissibility of Cenvat Credit on welding electrodes as capital goods had been squarely decided by the Larger Bench of the Tribunal in the matter of **Triveni Engg & Indus. Ltd. vs CCE, Meerut,** reported in 2005 (186) ELT 158 (T-LB), wherein it was held that, the welding electrodes which are used for repairs and maintenance purpose are

not covered under the definition of the capital goods and hence not eligible for the benefit of the cenvat credit.

5. The decision of the Tribunal in **Vikram Cement's** case (supra), after taking into consideration the decision of the Rajasthan High Court and various other decisions, is to the effect that the welding electrodes used for repair and maintenance of machinery do not form inputs within the meaning of the said expression under the said Rules for the purpose of claim of credit as the said products are not used or utilized in the process of manufacture of the final product or in relation to the manufacture of the final products.

6. The decision in **Vikram Cement**'s case (supra) was arrived at after taking into consideration the decision of the Tribunal in the matter of **SAIL vs CCE, Ranchi,** reported in 2003 (159) ELT 233, confirmed by the Apex Court which was reported in 2008 (229) ELT A127 (SC). It was also recorded that the Apex Court had dismissed the appeal against the same with clear observation that "On facts of this case, matters stand dismissed". Relying upon the decision of the Apex Court in the matter of **Kunhayammed vs State of Kerala,** report in 2001 (129) ELT 11 (SC), it was held that, if SLP is allowed and the appeal is entertained and thereupon the appeal is dismissed, then in that case the order dismissing the appeal results in merger of the order passed by the lower authority in the order of the Supreme Court. In such cases, therefore, it amounts to confirmation of the view taken by the lower appellate authority by the Apex Court. Considering the same, it was held that the decision of the Larger Bench of the Tribunal in the matter of **Jaypee Rewa Plant vs CCE,**

reported in 2003 (159) ELT 553 (T-LB), which was followed in **SAIL**'s case (supra) was binding upon the Tribunal.

7. The observations of the Rajasthan High Court and that of Chhattisgarh High Court in relation to the decision in the matter of **Jaypee Rewa Plant** (supra) as well as in the matter of **SAIL** (supra) do not appear to be in consonance with the decision of the Apex Court. Once the order of the Tribunal merges in the order of the Supreme Court, it ultimately assumes the character of binding precedent and considering the same, therefore, we are bound by the decision of the Larger Bench in **Jaypee Rewa Plant**'s case (supra) as well as in **Triveni Engg & Indus. Ltd.**'s case (supra).

8. It is pertinent to note that the finding in relation to the welding electrodes being not capital goods and that the same are used in repairs and maintenance of the machinery and not in the manufacture or in relation to the maintenance arrived at by the Commissioner (Appeals) has not been challenged by the appellants.

9. For the reasons stated above, therefore, we do not find any infirmity in the impugned order and hence the appeal fails and is hereby dismissed.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

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