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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/1054/2009 – SM[BR] Date 07/12/2010

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S ASHOK ISPAT UDYOG, Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1351 / 2010-SM[BR] dated 23.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S ASHOK ISPAT UDYOG,
   215, SECTOR-C, URLA INDUSTRIAL AREA, RAIPUR (C.G.)
2. Adv. / Consult SHRI S.VYAS ADV.
   P-13,SECTOR-12, NOIDA-201301.

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 1054 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 19/RPR-I/2009 dated 16.2.2009 passed by the Commissioner of Central Excise (Appeals), Raipur]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : NO
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? : NO

Commissioner of Central Excise
Raipur — Appellants

Vs.

M/s. Ashok Ispat Udyog — Respondent

Appearance: Shri S.R. Meena, SDR for the Appellants
Shri S. Vyas, Advocate for the Respondent

Date of Hearing/decision : 23.11.2010

Final **ORAL ORDER NO. 1351/2010 SM (BR)**

Per M. Veeraiyan:

Heard both sides.

2. The dispute relates to eligibility of Cenvat credit on welding electrodes. The respondent is a manufacturer of excisable goods and used duty paid welding electrodes in repair and maintenance of machinery. The original authority disallowed the credit and ordered recovery of Rs.50,779/- along with interest and imposed equal amount as penalty. Commissioner (Appeals) allowed the appeal treating the same as consumables.

3. Learned DR relying on the decision of the Tribunal in Oswal Overseas Ltd. vs. CCE, Meerut II reported in [2010 (254) ELT 338 (Tri-Del)] submits that welding electrodes cannot be treated as capital goods. He also submits that same cannot be treated as inputs as they ~~are~~ clearly fall under the category of consumables.

4. Learned advocate for the respondent relies on the decision of Hon'ble High Court of Rajasthan in the case of Hindustan Zinc Ltd. vs. UOI reported in [2008 (228) ELT 517 (Raj.)] wherein the welding electrodes were treated as capital goods. He also relies on the decision of the Hon'ble High Court of Chhattisgarh in the case of Ambuja Cements Eastern Ltd. vs. CCE, Raipur reported in 2010 (256) ELT 690 (Chhattisgarh) wherein the welding electrodes used in the repair and maintenance of plant and machinery are held to be covered by the definition "inputs" under Rule 2(g) of Cenvat Credit Rules, 2002.

5. In view of the above, inasmuch as the Hon'ble High Court of Rajasthan and Hon'ble High Court of Chhattisgarh have allowed Cenvat

credit on welding electrodes treating them as capital goods and inputs respectively, the question of denial of credit does not arise. Therefore, there is no reason to interfere with the order of the Commissioner (Appeals).

6. The appeal by the department is therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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