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GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB (SM)

Appeal No. E/1096/98-NB(SM)

Dated: 22/1/2001

CEGAT
NEW DELHI
To,

M/s J.K. Udaipur Udyog Ltd.,

P.O. Shripati Nagar. C.F.A - 313021

Udaipur (Raj.)

In the matter of :

M/s J.K. Udaipur Udyog Ltd.,

Appellant

vs.

CCE Jaipur

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/101/2001/NB(SM)
Dated: 16-1-2001 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar
NB(SM)

1. CCE Jaipur
2. CCE/CC/(Appeal) Jaipur
3. Chief Commissioner of Central Excise / Customs. Jaipur
4. Adv. / Consult. Shri Rajesh Kumar, Adv.
24A, DDA SFS Flat, Mount Kailash
East of Kailash, New Delhi - 65
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s cen - cus Publication.

Asstt. Registrar

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(Final Order Sheet)

In the Custom, Excise & Gold (Control) Appellate Tribunal New Delhi

APPEAL NO. E/1096/98-NB(SM) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL APPEAL NO.

80-CE/JPR/UD/98 DATED 18.2.98

PASSED BY: Commissioner (Appeals), Customs &
Central Excise, New Delhi.

Date of decision 16.1.2001

M/s J.K. Udaipur Udyog Ltd.

APPELLANT(S)

Represented by Sh./Smt. xxx Rajesh Kumar, Adv.

VERSUS

CCE, Jaipur

RESPONDENT(S)

Represented by Sh./Smt. Bheema Shankar, SDR

CORAM:

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not?

FINAL

ORDER NO. A/101/01/NB(CE/M)

Per P.G. Chacko :

This appeal filed by the assessee is against the Order of the Commissioner (Appeals) who held the following items to be ineligible for modvat credit under Rule 57A of the Central Excise Rules on the ground

that the goods were used in the mining area which did not form part of their factory.

1. Tooth Points for PC-650
2. Aerial Rope
3. Flat and chiesel
4. Compressor spare parts
5. Various type pulleys
6. Conveyor belt

2. It appears that the issue which was considered by the lower appellate authority was as to whether the mining area could be covered by the definition of "factory" under Section 2 (e) of the Central Excise Act. The authority followed the ratio of the Tribunal's decision in the case of Madras Cement Ltd, Vs. CCE Hyderabad [1998 (74) ECR 201] and held that the mining area was not covered by the definition of factory and, therefore, the aforesaid items used outside the factory could not be held to be eligible for credit under Rule 57A. It is fairly conceded by ld. Advocate that the above issue stands squarely covered against assessee by the Tribunal's Larger Bench decision in the case of Jaypee Rewa Cement [2000 (38) RLT 1111]. Ld. Counsel would, however, challenge the impugned order on another ground namely that the Commissioner (Appeals) considered the movability of the goods as inputs under Rule 57A whereas the adjudicating authority had treated the goods

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as capital goods under Rule 57Q. I am unable to accept this new ground, which is not a pure legal ground which can be raised at the bar. This ground is very much a factual one which ought to have been raised in the memorandum of appeal. I have not come across any such ground in the appeal memo. Even if the new ground now raised by Id. Counsel were to be accepted, the appellants still do not stand to gain inasmuch as there is another larger Bench decision of the Tribunal holding that capital goods installed outside the "factory" (as defined under Section 2(e) of the Act) will not qualify for modvat credit under Rule 57Q vide *Vikas Industrial Gas Vs. CCE* [2000 (118) ELT 257]

2. In view of the fact that the issue considered by the lower appellate authority stands settled against the assesseees as aforesaid, this appeal of the assesseees fails on merits. However, having regard to the facts and circumstances of the case, I find that there was no warrant for imposition of any penalty on the party. Therefore, the penalty is set aside. The appeal is accordingly disposed of.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM