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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/1980/2009 – SM [BR]** Date **13/04/2011**

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

To :
M/S NARMADA SUGARS PVT. LTD.
SALICHAUKA, DISTT. NARSINGHPUR (M.P.)

M/S NARMADA SUGARS PVT. LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. 178 / 2011 –SM[BR]** dated 29.3.2011 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.P.C.KASHIV
E-3/49,STOP NO 10,KAMDAR MARKET,BHOPAL

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:29.3.11
Date of decision:29.03.11

Excise Appeal No.1980 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.154/BPL/2009 dated 4.3.2009 passed by the Commissioner of Central Excise (Appeals), Bhopal].

M/s. Narmada Sugars (P) Ltd. Appellant

Vs.

CCE, Bhopal Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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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?

Appearance: Rep. by Shri P.C. Kashiv, Consultant for the appellants.
Rep. by Ms. Rimjhim Prasad, SDR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final

Order No. 178/2011 SM (BR) /Dated:29.03.2011

Per Rakesh Kumar

The appellants are manufacturers of sugar chargeable to central excise duty. They availed facility of Cenvat credit of duty for manufacture of sugar. The point of dispute in this case is as to whether the angles, channels, bars, etc. and welding electrodes used by the appellants are eligible for cenvat credit either as capital goods or as inputs. According to the appellants, these items had been used mainly for fabrication of certain parts of sugar mill machinery and in some cases, for repair and maintenance of the machinery. However, the Asstt. Commissioner vide order-in-original dated 26.08.2008 disallowed the cenvat credit on these items and the Asstt. Commissioner's order was upheld by the Commissioner (Appeals) vide order-in-appeal dated 4.3.2009.Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Shri P.C. Kashiv, Consultant, ld. Counsel for the appellant, pleaded that the appellants had availed cenvat credit on iron and steel items falling under Chapter 72 and the Welding Electrodes that these items had been used mainly for fabrication of the certain parts of the machinery of the sugar mill, as detailed in the reply to the show cause notice dated 4.11.2007 and also dated 11.09.08, that the items which have been used for fabrication of the sugar mill machinery are covered by the definition of "inputs" as given in Rule 2 K of Cenvat credit Rules, that the items which have been used for repair and maintenance of the sugar

mill machinery are also eligible for cenvat credit, that neither the Asstt. Commissioner nor the Commissioner (Appeals) has considered the submissions of the appellants that the items, in question, had been used mainly for fabrication of various components and parts of sugar mills and in some cases, for repair and maintenance, that the Asstt. Commissioner has simply denied the cenvat credit by observing that the items are not covered by the definition of capital goods and the appellant's plea that the items i.e. bars, channels, angles, welding electrodes, etc. had been used as inputs for fabrication of certain items which were covered by the definition of capital goods has not been considered and that in view of this, the impugned order is not correct.

3. Mrs. Rimjhim Prasad, ld. Departmental Representative,defending the impugned order reiterated the findings of the Commissioner (Appeals) and pleaded that the appellants have not produced any evidence in support of their claim that M.S. Angles, Channels, bars, rounds, sheets, etc. and welding electrodes had been used for fabrication of sugar mills machinery, that the denial of Cenvat credit on welding electrodes had not been contested before the Commissioner (Appeals), that in the appeal before the Tribunal, nowhere in the grounds of appeal any plea regarding their eligibility for Cenvat credit on the welding electrodes has been made as in their prayer, the appellant have prayed for setting aside of the impugned order regarding cevant credit in respect of the items of iron and steel used in fabrication of machinery and

repair of the existing machinery and that in view of this, there is no infirmity in the impugned order. She also pleaded that this case is squarely on merits covered by the Larger Bench judgement of the Tribunal in the case of **Vandana Global Vs. CCE, Raipur reported in 2010 (253) ELT 440 (T-LB)**, wherein it has been held that iron and steel items such as M.S. Plate, Beam, Channel, RBC Chain and Wire ropes, etc. are not eligible for cenvat credit either as capital goods or inputs. In this case all the disputed items have been used in erection of supporting structures or platforms.

4. I have carefully considered the submissions from both the sides and perused the records. The point of dispute in this case is as to whether the M.S. Plates, Angles, Channels, Bars, etc. and Welding Electrodes used by the appellants are eligible for Cenvat credit. According to the appellant, these items had been used for fabrication of various items of sugar mill machinery as detailed in reply dated 4.11.2007 and 1.9.2008 to the show cause notice and in some cases, these items have been used for repair and maintenance of the plant and machinery. In view of the judgement of the Hon'ble Rajasthan High Court in the case of **Hindustan Zinc Ltd. Vs. CCE reported in 2007 (214) ELT 510** and of Hon'ble Chattisgarh High Court in the case of **Ambuja Cement Ltd. Vs. CCE, Raipur reported in 2010 (256) ELT 690**, the welding electrodes and items of iron and steel used for repair and maintenance of plant and machinery are eligible for cenvat credit. In view of this to the extent the

items in question have been used for repair and maintenance of machinery, the same would be eligible for cenvat credit, but I find that this aspect has not been considered either in the impugned order or in the order-in-original. On going through the order-in-original passed by the Original authority and order-in-appeal passed by the Commissioner (Appeals), I find that the appellants' contention that the items in question had been mainly used for fabrication of various items of sugar mill machinery like Body 700 M2/h and its dorr water tanks, etc. have also not been discussed at all. If the appellants have claimed that the M.S. Channels, Rods, etc. had been used for fabrication of the Sugar Mill machinery, these items would be covered by the definition of inputs. But since this aspect has also not been considered either in the order-in-original or in the order-in-appeal. The impugned order is, therefore, set aside and the matter is remanded to the original adjudicating authority for de novo adjudication after hearing the appellant and considering their claim that the items in question had been used for fabrication of the various items of the capital goods for use in the sugar mill plant and in some cases for repair and maintenance. The appeal stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.