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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/1243/2008 – SM[BR]** Date **26/07/2011**

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

To :
M/S NANDGANJ SIHORI SUGAR CO. LTD.
DARIYAPUR, P.O. MUNSHIGANJ, RAEBAREILLY
229405 (U.P.)

M/S NANDGANJ SIHORI SUGAR CO. LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 435 / 2011-SM[BR]** dated 14.7.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
COURT NO. V

Excise Appeal No. 1243 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 28/CE/LKO/2008 dated 29.02.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Lucknow]

For approval and signature:

Hon'ble Mr. M. V. Ravindran, Member (Judicial)

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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? : yes

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M/s. Nangganj Sihori Sugar Co. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Lucknow — Respondent

Appearance:

Ms. Sukriti Das, Advocate for the Appellants
Shri S.K. Bhaskar, JDR for the Respondent

Date of Hearing/decision : 14.7.2011

Final **ORAL ORDER NO. 435/2011 SM(Br)**

Per M. Veeraiyan:

This appeal is directed against order in Appeal No. 28/CE/LKO/2008 dated 29.02.2008 .

2. The short issue involved in this appeal is whether the appellant is eligible for availment of Cenvat credit on welding electrodes which is used by them for repair and maintenance of plant and machinery. Both the lower authorities have held that credit is not admissible.

3. Learned Counsel submits that identical issue of credit on duty paid on welding electrodes used in repair and maintenance of plant and machinery was held to be eligible for Cenvat credit by the Hon'ble High Court of Chhattisgarh and High Court of Rajasthan and High Court of Karnataka in the following cases:

1. Ambuja Cements Eastern Ltd. vs. CCE, Raipur
   2010 (256) ELT 690 (Chattisgarh);

2. Hindustan Zinc vs. Union of India
   2008 (228) ELT 517 (Raj);

3. CCE, Bangalore I vs. Alfred Herbert (India) Ltd.
   2010 (257) ELT 29 (Kar).

4. Learned DR, on the other hand, relied upon the judgement of Division Bench of the Tribunal in the case of Vikram Cement vs. CCE, Indore reported in [2009 (242) ELT 545 (Tri-Del)] and judgement of Apex Court in the case of Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut I reported in [2010 (260) ELT 321 (SC)].

5. It is his submission that in the case of Vikram Cement, the Tribunal has considered the issue of welding electrodes used for repair of machinery and has also considered the various judgements cited by the Bench which Hindustan Zinc Ltd. cited by the learned Counsel. It is his submission that Cenvat credit of duty paid on welding electrodes is still disputed item which is evident from the fact that Hon'ble Supreme Court has referred the matter to Larger Bench in the case of Ramala Sahakari Chini Mills Ltd. (surpa).

6. I have considered the submissions made by both sides and perused the records. I find that orders of the adjudicating authority as well as from the submissions of the learned counsel that the issue involved in this case and the disputed fact is whether duty paid on welding electrodes are used in the factory of appellant for repair and maintenance of plant and machinery is eligible for Cenvat credit. I find that judgements cited by the learned Counsel of Hon'ble High Courts of Chhattisgarh, Rajasthan and Karnataka are directly on the point, wherein it is held that Cenvat credit can be availed on welding electrodes which are used for maintenance of plant and machinery. These judgements are binding on me.

7. As regards the decision of the Division Bench cited by the learned DR in the case of Vikram Cement, since judgements of the High Court are of higher judicial fera, hence have more binding force. As regards the Ramala Sahkari Chini Mills (supra), I find that this matter is referred to the Larger Bench of the Hon'ble Supreme Court ,

this would indicate that at this juncture the judgement of the Hon'ble High Court as referred to hereinabove are binding on me and respectfully following the same, the impugned order is liable to be set aside. The impugned order is set aside.

The appeal is allowed with consequential relief.

(M.V.Ravindran)
Member(Judicial)

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