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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/ 2774/2009 – SM [BR] **Date 18/08/2011**

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

To :
C.C.E. MEERUT I
EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN
SINGH UNIVERSITY MANGAL PANDAY NAGAR,
MEERUT - 250005.

C.C.E. MEERUT I Appellant

Vs

M/S UPPER DEOB SUGAR MILLS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 475 /2011-SM[BR]** dated 13.7.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S UPPER DEOB SUGAR MILLS,
SHAMLI,DISTT.
MUZAFFARNAGAR.

2. Adv. / Consult SHRI S.C.KAMRA ADV.
B-2/210[BASMENT] SAFDARJUNG ENCLAVE 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH
Court-IV
Excise Appeal No.2774 of 2009-SM

Date of Hearing/Decision: 13.07.2010

(Arsing out of Order-in-Appeal No.74-75-CE/MRT-I/2009 dated 30.06.2009 passed by the CCE(A), Meerut-I)

For approval and signature:

Hon'ble Mr.Ashok Jindal, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	

CCE, Meerut-I — Appellant

Vs.

M/s.Upper Doab Sugar Mills — Respondent

Present for the Appellant: Shri A.K.Khanna, SDR
Present for the Respondent: Shri S.C.Kamra & Sh.G.K.Mahajan, Advocates

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 475/2011 SM (Br)

PER: ASHOK JINDAL

The Revenue is in appeal against the impugned order wherein the mandatory penalty under Section 11AC of Central Excise Act, 1944 was dropped by the lower appellate authority on the ground that there is issue of interpretation whether the assessee is entitled for credit on welding electrode which are being used for repair and maintenance of plant an machinery or not.

2. Learned SDR submitted that the issue is whether the credit on welding electrodes which are being used for repair and maintenance of plant and machinery are entitled for credit or not, is pending before the Apex Court in the case of Ramala Sahkari Chini Mills Ltd. vs. CCE, Meerut-I reported in 2010 (260) ELT 321. Therefore, the impugned is to be set aside.

3. On the other hand, learned Advocate for the respondents submitted that in the impugned order the Commissioner (Appeals) has confirmed the demand by denying the credit on welding electrodes used for repair and maintenance of plant and machinery was challenged before this Tribunal and this Tribunal vide order No.255-256/2011-SM(Br) dated 27.04.2011 has held that the assessee is entitled for credit on the welding electrodes which are being used for repair and maintenance of the plant and machinery. As no duty is payable by the respondents, therefore, the question of penalty does not arise and this appeal shall be merged with the order of this Tribunal cited hereinabove.

4. Heard both sides and considered the submissions made by them.

5. On careful consideration of the submissions made by learned DR, I find that the Revenue has challenged in this appeal for imposing penalty under Section 11AC ibid. The Commissioner (Appeals) has dropped the penalty on the ground that there is issue of interpretation whether the assessee is entitled for credit on

welding electrode, which are being used for repair and maintenance of plant an machinery or not. Therefore, the penalty is not imposable in the absence of ingredients of Section 11AC ibid. Learned DR himself has admitted that in the cited decision in the case of Ramala Sahkari Chini Mills Ltd., the issue is still in controversy, therefore, the ingredients of Section 11AC are absent , in the facts and circumstances of the present case. Therefore, the mandatory penalty cannot be imposed against the respondents. Moreover, the impugned order confirming the duty has already been set aside by this Tribunal, therefore, the question of imposition of penalty does not arise.

6. In view above observations, I do not find any merits in the Revenue's appeal. Therefore, the appeal is dismissed.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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