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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2792/2005,748-749,2993/2006 - EX[DB] Date **14/02/2012**
E/908-909/2007-EX

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

To :
JAYPEE REWA PLANT,
JAYPEE NAGAR DISTT REWA M.P.

JAYPEE REWA PLANT, Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/125-130/ 2012 EX[DB]** dated 30-1-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise 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.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
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 - 110005
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
14. JAYPEE BELA PLANT,
JAYPEE PURAM, DISTT. REWA (MP)

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Excise Appeal No.2792 of 2005, No.748-749 & No.2993 of 2006 and No. 908-909 of 2007

Date of Hearing : 23.01.2012.

[Arising out of Order-In-Original No.05-06/Comm/CEX/05, dated 24.03.2005 issued by CCE, Bhopal]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Sahab Singh, Technical Member

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

M/s Jaypee Rewa Plant & ors. — Appellants
Versus
CCE, Bhopal — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Sahab Singh, Technical Member

Present for the Appellants - Shri B.L.Narsimhan, Adv.
Present for Respondent - Shri R.K.Varma, DR

FINAL **Order No.** A/125-130/2012-EX(BR) **Dated :**____________

Per Ms. Archana Wadhwa:

All the appeals are being disposed of by a common order as the issue involved is identical.

2. Both sides agree that the impugned orders disallow the benefit of Modvat Credit of duty paid on the cleanflow, welding

electrodes and various iron and steel items like plate, angle, channel, wheels, bars etc.

3. As regards cleanflow, we find that the issue already stands decided in the appellants' own case vide Final Order No.642-646/2011-EX(DB), dtd. 21.07.11. By following the precedent decision of the Tribunal in the case of Jaypee Bela Plant reported in 2010(259)ELT114, cleanflow, one of the chemicals used by the appellants, was held to be eligible Modvatable input. By following the same, we allow the credit in respect of cleanflow.

4. As regards, availability of Modvat Credit in respect of steel items, the earlier order of the Tribunal in the same appellants case, has remanded the matter by observing as under :-

> "6. *As regards the steel items, it has been held in the decision of the Larger Bench in the case of Vandana Global Ltd. (supra) that such items used for laying foundation and building supporting structures cannot be allowed the Cenvat credit. At the same time, the said decision also allows Cenvat credit for manufacture of parts and components of capital goods which are also covered in the definition of capital goods. In the present case, th material available before us is not enough to decide as to whether the impugned steel items have been used for manufacture of parts and components or not. Hence we are of the view that the matter is required to be remanded to the original authority for verifying the actual use of the impugned steel*

items and for taking fresh decision regarding eligibility of the impugned goods for Cenvat credit in the light of the decisions cited above."

5. By following the above decision, we also remand the matter to original adjudicating authority for examining the availability of credit in respect of various steel items, depending upon actual use of the same.

6. In respect of denial of Modvat credit on welding electrodes, ld. Advocate draw our attention to the Hon'ble Chhatisgarh High Court's decision in the case of Ambuja Cements Eastern Ltd. reported in 2010(256)ELT690(Chhatisgarh), laying down that welding electrodes used in repair & maintenance of plant & machinery are Modvatable capital goods. In as much as we have already remanded the matter for examining the availability of credit in respect of steel items, the original adjudicating authority would also re-decide the issue of availability of credit on welding electrodes in the light of the above declaration of law by the Hon'ble High Court. The appellants are at liberty to place reliance on any other judgements.

7. All the appeals are disposed of in above manner.

(Pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Sahab Singh)
Technical Member

RK-I