

**Jayaswal Neco Ltd. Vs. C.C.E.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-31-2006

**Judge :** N T C.N.B., M Ravindran

**Appellant :** Jayaswal Neco Ltd.

**Respondent :** C.C.E.

**Judgement :**

1. Heard both sides and perused record. The appeals themselves are required to be disposed of. Accordingly, we proceed with the appeals after dispensing with requirement for pre-deposit of duty.
2. The appellant is a manufacturer of Pig Iron. It also has a captive power generation plant which generates electricity for use in pig iron production. Part of the electricity also comes to be disposed of as the same is surplus.
3. The duty demand has arisen on the finding that since part of the electricity is cleared without payment of duty, the appellant is required to pay 8% of the value and such electricity in terms of Rule 57CC of the Central Excise Rules.
4. The contention of the learned Counsel for the appellant is that an identical issue had come up before the Tribunal in the case of Ballarpur Industries Ltd. v. C.C.E., Nagpur 2005 (129) ECR 268 and the Tribunal held that such a demand under Rule 57CC is not sustainable.

5. It is seen that the issue remains covered in favour of the assessee by the aforesaid judgment of the Tribunal. We may read para 15 of that judgment: 15. I find that "Exempted goods" are defined in the Cenvat Credit Rules as "excisable goods" which are exempt from the whole of the duty including goods which are chargeable to nil rate of duty.

"Excisable goods" are defined in the Central Excise Act, 1944 as "goods" specified in the schedules to the Central Excise Tariff Act, 1985 which are subject to a duty of excise. In view of the fact that there is no duty specified in the schedule to Central Excise Tariff Act for electricity, the same cannot be considered either as excisable goods or as exempted goods. At the same time, electricity not being excisable goods cannot also be considered as "final products" for the purpose of the Cenvat Credit Rules in view of the specific definition therein. Consequently, the electricity supplied to the colony would fall outside the Cenvat scheme. The credit taken on inputs used in production of such electricity is inadmissible and I find that the proportionate amount relating to such electricity supplied to outside colony has already been reversed by the appellants. As such, I am of the view that the demanded duty in excess of such reversal is not recoverable from the appellants.

Accordingly, I agree with the Hon'ble Member (Judicial) to allow the appeal for the reasons recorded by me above.

6. The case of the present appeals is the same as of M/s Ballarpur Industries Ltd. The decision in that case applies to the present appeals also.

7. Following the order in the case of Ballarpur Industries Ltd., the present appeals are allowed after setting aside the impugned orders.

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