

Up State Sugar Corp. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-26-2006

Reported in : (2007)(115)ECC114

Judge : M Ravindran

Appellant : Up State Sugar Corp. Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against the order in appeal dated 19.7.04 that set aside the order in original which granted the appellant benefit of modvat credit on welding electrodes, plain plates, joints, channel, etc.
2. Considered the submissions made by both the sides. As regards to modvat credit on welding electrodes, the issue involved in this case is whether the credit is allowable to the appellants on the welding electrodes as input or capital goods. It is not very clear from the record that the appellant has availed the modvat credit on welding electrodes as capital goods or as an input. If the credit availed is as an input, the ratio of the decision of the Hon'ble High Court of Rajasthan in Central Excise Reference No. 9/2002 will come to the rescue of the appellant. As such, since the issue has to be decided by the lower authorities whether the credit is availed on welding electrodes as input or capital goods, the order in appeal to the extent it relates to denial of credit on welding electrodes, is set aside and remanded to the original authority for deciding the matter afresh in the light of

judgment of the Hon'ble High Court of Rajasthan. The Adjudicating Authority will grant an opportunity of personal hearing to the appellant and decide the matter afresh.

3. As regards the modvat credit availed on the Plain Plates, Joints, MS Sheets, etc. the issue is squarely covered in favour of the appellant in the case of Simbholi Sugar Mills Ltd v. CCE Meerut 2000 (39) RLT 686 as upheld by the Supreme Court. Further this Tribunal in the case of Uttam Sugar Mills has followed the decision of Simbholi Sugar Mills and granted modvat credit to the appellant. Respectfully following the same, the impugned order to the extent it denies modvat credit on Joints, channels, HR Sheets Angles is liable to be set aside and the same is set aside.

4 Accordingly, the impugned order to the extent it denies modvat credit on the welding electrodes is set aside and remanded back to the original authority and as regards modvat credit on Plates, Joints, etc.

the appeal is allowed with consequential relief, if any. The appeal is disposed of in the above terms.

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