Lloyds Metals and Engineering Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-30-2008

Reported in : (2008)(128)ECC52

Judge : J Balasundaram, Vice

Appellant : Lloyds Metals and Engineering

Respondent : Commissioner of Central Excise

Judgement :

1. The issue in dispute in these appeals is the eligibility of welding electrodes used by the appellants herein, for repairs and maintenance of plant and machinery in their steel factory to Cenvat Credit under Cenvat Credit Rules, 2004.

2. I have carefully considered the submissions of both sides and find that although in the case of Jaypee Rewa Plant v. CCE 2003 (57) RLT 739, the Larger Bench of the Tribunal has held that the credit was not admissible on such items used for maintenance and repairs of the machinery, the Tribunal in the case of India Sugars and Refineries Ltd. v. CCE, Bangalore 2006 (74) RLT 61 (CESTAT-Ban.) has considered the decision in the case of Jaypee Rewa Plant but has not followed the same and followed the Larger Bench decisions in the case of Union Carbide India Ltd. v. CCE, Calcutta-I 1996 (15) RLT 144 (CEGAT-LB) and CCE, Meerut v. Modi Rubbers Ltd. 2000 (38) RLT 718 (CEGAT-LB) to conclude that the credit is admissible on welding electrodes used for repairs and maintenance of plant and machinery. The decision in the case of India Sugars and Refineries Ltd.

has been followed by the Tribunal in the case of Manikgarh Cement v. CCE Nagpur 2008-TIOL-43-CESTAT-MUM. The learned Joint CDR, however, has relied upon the decisions of the Tribunal in the case of Prism Cement Ltd. v. CCE, Bhopal 2006 (205) ELT 495 (Tri.-Del.) and in the case of Ramala Sahakari Chinni Mills Ltd. v.CCE, Meerut-I 2007 (211) ELT 412 (Tri.-Del.) to support the stand of the Revenue that the credit is not admissible on these items as they are neither capital goods nor inputs. However, neither of the decisions of the Tribunal noted the earlier decision in the case of India Sugars and Refineries Ltd. which have discussed the Larger Bench (sic) of the Tribunal on this aspect.

3. Therefore, the decision in India Sugars and Refineries Ltd. is required to be followed. The Hon'ble Rajasthan High Court in Union of India v. Hindustan Zinc Ltd. 2007 (214) ELT 510 (Raj.) has held that MS/SS Plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product are eligible to avail Modvat Credit, and following the same, I hold that the credit is admissible on the goods in question and accordingly set aside the impugned order, by which the credit has been disallowed (amounting to Rs. 1,51,080/-) and penalty of Rs. 75,000/- (in appeal No. E/563/07) and Rs. 1,45,127/- and penalty of Rs. 40,000/- (in appeal No.E/1148/07) and allow the appeals.