IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1453-1456 & 1616-1620/2011-EX[DB]

(Arising out of Order-in-Appeal No. 59-63-CE/MRT-II/2011 dated 28/02/2011 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Dhampur Sugar Mills Ltd. (in Appeal No. E/1453-1456 & 1616/2011)**,**

Amit Sharma, DGM (Comml.) (in Appeal No. E/1617-1620/2011)

Appellants

Vs.

Commissioner of Central Excise, Meerut-II (now Hapur)

Respondent

Appearance:

Ms. Pushpila Bisht, Advocate — for Appellants
Shri Sandeep Kumar Singh, Assistant Commissioner (AR) — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/08/2017
Date of Decision : 28/08/2017

FINAL ORDER NOs.-70735-70743/2018

Per: Anil Choudhary

The issue in these appeals is allowability of Cenvat Credit on items like Shape section/MS Angle/Channel/Girder/plate (7208/7216), M.S. Column, H.R. Coils, H.R. Cobbler Plates, CR Sheets, Steel Bars, M.S. Bar, etc.

2. The brief facts are that the appellant is a sugar factory engaged in manufacture of Sugar and Molasses and

Chemicals. The appellant availed Cenvat Credit on inputs and capital goods. Show cause notices dated 22nd May, 2009 & 21.05.2010 were issued objecting to taking of Cenvat Credit during the month of April, 2008, amounting to Rs.15,42,426/- on items like M.S. Column, H.R. Coils, HR SS Plates, etc. further interest and penalty was also proposed. Further Shri. Amit Kumar Sharma DGM Commercial, was also required to show cause why penalty be not imposed under Rule 26 of Central Excise Rule, 2002.

3. The SCN was adjudicated on contest vide Order-in-Original dated 29 October, 2010 passed by the Assistant Commissioner allowing credit of Rs. 60,798/- on items like M.S. Column, H.R. Coils, HR SS Plates, etc. Further, credit taken on M.S. Column, G.P. Coils, HR Sheets, etc., were disallowed amounting to Rs.14,81,628/- with further direction to pay interest and also penalty of Rs.14,81,628/- was imposed under Rule 15 of CCR read with section 11 AC of the Act. Penalty of Rs. 15,000/- (each order), totaling Rs.75,000/- was also imposed on Shri Amit Sharma, DGM Commercial. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who have been pleased to allow the appeal in part and have set aside the penalty imposed on the appellant company, observing that there is no contumacious conduct on the part of the

appellant and the issue is wholly interpretational in nature. However, the learned Commissioner did not interfere with the penalty imposed on the employee Shri Amit Kumar Sharma, finding that there is no separate appeal filed by him.

4. Being aggrieved the appellant company and the employee Shri Amit Kumar Sharma are before this Tribunal in appeal. The learned counsel for the appellant states that the learned Commissioner made factual errors in the order while observing that although the appellant produced the documents with regard to the use of the items in question, used in fabrication of various machinery with support of Chief Engineers/Chartered Engineers certificate, and failed to provide the name of the capital goods/parts of the capital goods which were fabricated out of the impugned items. The learned counsel points out from the reply to the show cause notice, that they had given the specific use of each and every item, disputed vide the show cause notice. So far the items in dispute before this Tribunal, she explains –

(i) So far HR Coils/CR Sheet, Shape Section/MS Channel/Girder/plate (7208/7216), M.S. Bar/TOR Sheet (7214/7219), GC Sheets, Skelp were used in the fabrication of pipe line of Cooling Tower of 170 Ton Boiler.

(ii) STD Unalloyed Cold Rolled Coil, Alloyed toughened corrugated CR sheet were used in the fabrication of DM plant tank, which is a part of 170 Ton Boiler.

(iii) Alloyed toughened corrugated CR sheet, Alloyed Cold Rolled Part Coil wered used in the fabrication of HCL tank of R.O. Plant.

(iv) H.R. Coil/Cut Plate were used in the fabrication of cable clamp in the panel room of 80 M.W. Turbine.

(v) M.S. Girder, Plate/Shape and Section, M.S. Channel, Unalloyed Cold Rolled art Coil used in the fabrication of base and supporting structure of pumps and Motors of 170 Tons Boiler.

(vi) Alloyed Cold Rolled Part Coil, Corrugated C.R. Sheet used in fabrication of base frame of F.D. fan of 170 Ton Boiler.

(vii) A.C. Corrugated sheet were used in the bagasse handling system of 170 Tons Boiler. These Corrugated sheet were used to cover the rubber belt of bagasse handling system, through which bagasse (fuel) is fed in the furnace of 170 Tons Boiler cover is to save the bagassee from moisture and rain.

5. The learned Advocate further states that Explanation to Rule 2(k) of CCR provides that, input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer, and in the

definition of Capital Goods in Rule 2(a), "capital goods means and includes components, spares and accessories of the goods which are capital goods, falling under Chapter 82, 84, 85, 90, etc. Accordingly, the credit taken is correct and the same may be allowed.

6. The Learned A.R. for the Revenue have relied on the impugned order.

7. Having considered the rival contentions I find that the items in dispute are either components of capital goods or inputs which have been used in manufacture of capital goods, which are further used in the factory of the appellant for manufacture of dutiable goods like sugar and molasses etc. Accordingly, I hold that the appellant is entitled to Cenvat Credit on the items in dispute. Accordingly, these appeals are allowed. We also set aside the penalty imposed on the company and Shri Amit Kumar Sharma, DGM Commercial of the appellant company.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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