IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
CROSS Application No. E/CROSS/239/2011
APPEAL No. E/2228/2011-EX[DB]

(Arising out of Order-in-Appeal No.130-131/CE/MRT-II/2011 dated 24/05/2011 passed by Commissioner (Appeals), Customs, Central Excise, Meerut-II)

Commissioner of Central Excise, Meerut-II **Appellant**

Vs.

M/s DSM Sugar **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Appellant
Shri Aalok Arora (Advocate) for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/06/2018
Date of Decision : 26/06/2018

FINAL ORDER NO. – 71247/2018

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals) vide which, while upholding the denial of Cenvat credit in respect of cables and other capital goods laid down between the grid of the U.P. State Electricity Board and the assessee's factory for transmission of the electricity, Revenue has filed the present appeal, against that part of the impugned order of Commissioner (Appeals) vide which he has set aside the penalty and has not confirmed the interest. The assessee has also filed Cross Objection against that part of the order vide which the denial of Cenvat credit stands upheld. The said Cross Objections are required to be disposed of as an appeal.

2. On going through the impugned order, we note that the sole reason for denial of the credit in respect of cables and capacitator is that the same are installed outside the factory premises and as such cannot be treated as capital goods. Learned Advocate explains that they have their own generation plant and in case of excess generation of electricity, the same is transferred to the grid and whenever they require electricity, the electricity is obtained from the Electricity Board through the grid and the cables are required to be laid down for the said purpose. He submits that the issue is no more *res integra* inasmuch as in the case of Parry Engineering & Electronics P. Ltd. vs. CCE & ST, Ahmedabad – 2015 (40) S.T.R. 243 (Tri.-LB), Larger Bench of the Tribunal has held that the Windmills installed outside the factory premises, at far of places, are cenvatable capital goods. In terms of the said Larger Bench decision of the Tribunal, the denial of credit on the ground that capital goods are not installed in the factory premises is neither proper nor justifiable.

3. While dealing with assessee's appeal, we find favour with the submission made by the learned advocate. The Larger Bench in the above referred case has held that even the Windmills which are installed at far-off places from the factory premises are cenvatable capital goods. By following the ratio of the same, it has to be held that the cables laid down by the assessee as also the other capital goods laid down en-route the grid and the factory premises for the purpose of transmission of electricity have to be held as cenvatable. As such, we set aside the confirmation of demand against the assessee.

4. Inasmuch as the assessee's appeal stands allowed nothing survives in the Revenue's appeal which is only in the context of interest and penalty. The same is accordingly rejected. Both the appeals are disposed of in above manner.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks