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

APPEAL No. E/70436/2018-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-1684 & 1685-17-18 dated 16/02/2018 passed by Commissioner of Central Tax Commissionerate (Appeals), Noida)

M/s Dwarikesh Sugar Industries Ltd.	**Appellant**
Vs.	
Commissioner, Central GST, Greater Noida	**Respondent**

Appearance:

Shri Alok Arora, (Advocate)	for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR	for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of Hearing	:	10/07/2018
Date of Decision	:	10/07/2018

FINAL ORDER NO **71387 / 2018**

Per: Archana Wadhwa

After hearing both the sides I find that Commissioner (Appeals) disposed of two different appeals filed before him arising out of two different orders of the Original Adjudicating Authority. However, issue involved in both the appeals were same i.e., availability of Cenvat Credit of duty paid on various Iron and Steel parts used in fabrication of Cane Carrier and Bagasse Carrier, which are used for carrying the canes as also bagasse in the appellant's factory, which is engaged in the manufacture of sugar.

2. Surprisingly in the same order Commissioner (Appeals) has allowed the credit in respect of one appeal by following the Tribunal's decision in the case of CCE, Meerut-I vs. Monnet Sugar Ltd., reported at 2011 (265) ELT 233 (Tri.) as also another decision in the case of Kisan Sahkari Chinni Mills Ltd. vs. Commissioner of C. EX., Lucknow reported at 2012 (283) ELT 507 (Tri.-Del). However, in respect of other appeal by referring to the same very decisions, he has disallowed the credit by observing that items are not eligible for availing Cenvat Credit.

As the same the impugned order is self contradictory inasmuch as the Appellate Authority has allowed the one appeal and rejected the another one, though the issue involved was the same i.e., in respect of use of parts in the fabrication of cane carrier and bagasse carrier. As such I would like to set aside the said order and remand the matter to Commissioner (Appeals) for fresh decision. Ordered accordingly.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit