CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

(E-Hearing)

Excise Appeal No.70294 of 2025

(Arising out of Order-In-Appeal No.MRT-EXCUS-000-APPL-176-2024-25, dated 30/09/2024 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

M/s Dwarikesh Sugar Industries Ltd **.....Appellant**
(Dwarikesh Puram, Afzalgarh
Bijnor, Uttar Pradesh 246722)

VERSUS

Commissioner, CGST & Central Excise, Meerut-I
....Respondent
(Opposite C.C.S.University, Mangal Pandey Nagar
Meerut, Uttar Pradesh 250002)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70817/2025

DATE OF HEARING : 30.10.2025
DATE OF DECISION : 27.11.2025

P. K. CHOUDHARY:

Present appeal has been filed by the Appellant assailing the Order-In-Appeal No.MRT-EXCUS-000-APPL-176-2024-25, dated 30/09/2024 passed by Commissioner (Appeals) CGST & Central Excise, Meerut.

2. The facts of the case in brief are that the Appellant M/s Dwarikesh Sugar Industries Ltd., are engaged in manufacture of sugar and molasses and are availing CENVAT

Credit on duty paid on inputs, capital goods and input services used/utilized for the manufacture of their final products.

3. During the course of the scrutiny of ER-1 Return filed for the month of March 2009, it was observed that the CENVAT Credit availed of Service Tax on the basis of invoices issued by M/s Central Warehousing Corporation, Muzaffarnagar[1]. From the documents submitted by the Assessee, it was evident that they have availed CENVAT Credit of Service Tax on input services namely 'Storage and Warehouse service' used for storage of their duty paid final product i.e. sugar in the warehouse of M/s CWC, Muzaffarnagar.

4. It is the case of the Department that the 'Storage and Warehousing services' availed by the Appellant-Assessee for storage of their duty paid final product i.e. sugar outside the factory premises are not covered by the definition of input services in terms of Rule 2(l) of the CENVAT Credit Rules, 2004.

5. Accordingly, Show Cause Notice[2] dated 12.05.2010 was issued to deny the CENVAT Credit of Rs.3,20,896/- and to impose penalty under the provisions of Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

6. Reply to the Show Cause Notice was filed. However, the Adjudicating Authority vide the Order-In-Original dated 15.12.2023 disallowed the CENVAT Credit and confirmed the demand as proposed in the SCN and also imposed penalty of equal amount under the provisions of Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

7. Being aggrieved, Assessee filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) rejected the appeal before him by upholding the

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[1] CWC, Muzaffarnagar
[2] SCN

Order-in-Original which has been assailed in this appeal before the Tribunal.

8. The learned Advocate appearing on behalf of the Appellant submitted that to store the sugar produced, the factory was not having sufficient space and hence they had to take the godown of M/s CWC, Muzaffarnagar on rent. The duty paid sugar was stored at the CWC godown and was cleared from time to time to the customers. It is his submission that since the activity was related to the business of the factory, therefore, CENVAT Credit on 'Warehousing Services' is admissible under the definition "Input Service' under Rule 2(l) of the CENVAT Credit Rules, 2004.

9. In support of his submissions he relied upon the decisions of the Tribunal in following case:

a) DSCL Sugar V/s Commissioner of Central Excise, Lucknow [2014 (34) S.T.R. 58 (Tri.- Del.)].
b) Thiru Arooran Sugars Ltd. V/s Commissioner of Central Excise, Puducherry [2017 (3) G.S.T.L. 199 (Tri.-Chennai)

10. He further submitted that the period of dispute in the present case pertains to April 2007 to March 2009, when the definition of input services was all together different.

11. Learned Authorised Representative appearing on behalf of the Revenue justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

12. Heard both the sides and perused the appeal records.

13. I find that the dispute in the present appeal is regarding the disallowance of CENVAT Credit of Rs.3,20,896/- to the Appellant on the services of 'Storage and Warehousing' provided by M/s CWC, Muzaffarnagar. It is not in dispute that there was dearth of storage space within the factory premises of the

Appellant and the final product i.e. sugar had to be stored properly and hence storage space was taken on rent at CWC, Muzaffarnagar and the finished product sugar was removed from the factory on the basis of appropriate Central Excise invoices.

14. I find that the dispute in the present appeal is no more *res integra* and is squarely covered by the Tribunal's decision in the case of DSCL Sugar V/s Commissioner of Central Excise, Lucknow (Supra). The relevant paragraphs are reproduced below for ready reference:-

> ***"5.*** *The contention of the Counsel for the appellant is that they were selling sugar from the godown at Agra and Farrukhabad. The above definition of input services allowed Cenvat credit for services utilised in relation to storage up to the place of removal. This expression is there in the said definition throughout the disputed period.*
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> ***6.*** *The Counsel points out that Cenvat Credit Rules, 2004 does not define the expression "place of removal". However, Rule 2(p) of said rules prescribes that whichever words and expressions are not defined in the said rules but are defined in the Central Excise Act, 1944 or Finance Act, 1994 the said definition will apply for the purpose of the said rules. He invites attention to the definition to "place of removal" in Section 4 of the Central Excise Act, 1944 which reads as under :*
>
> *(c) "place of removal" means -*
>
> *(i) a factory or any other place or premises of production or manufacture of the excisable goods;*
>
> *(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*
>
> *(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;*
>
> *from where such goods are removed;*
>
> ***7.*** *It is his contention that the godwon at Agra and Farrukhabad are the "places of removal" in this case because it is a place where sugar is stored after clearance from factory and is sold from the said godowns. Thus this place falls within clause (iii) of the definition of place of removal. He takes support from the Circular issued by C.B.E. & C. viz. 137/3/2006-CX., dated 2nd Feb., 2006 explaining that for the purposes of Cenvat Credit Rules, 2002 the definition of "place of removal" as given in Section 4 of Central Excise Act will apply. He points out further that para 4 of the said circular clearly states that the said definition will apply even in cases of goods which are subjected to specific rates of duty or duty based on value*

prescribed under Section 4A of Central Excise Act, notwithstanding the fact that the said expression is defined under Section 4 with a preamble that the definition is for the purposes of the said Section 4. He further points out that this issue was considered by the Division Bench of the Tribunal in L.G. Electronics (India) Pvt. Ltd. v. CCE - 2010 (19) S.T.R. 340. He invites attention specifically to para 5 and para 6.1 of the said decision.

8. *He has a further argument that the expression services in relation to "activity relating to the business" is specifically included in the definition of input services for the entire period in dispute even though the said expression has been deleted in the year 2011. Therefore his contention is that going by the clarification issued by the C.B.E. & C. and by the decision of the Tribunal in the case of L.G. Electronics he should be entitled for services utilised by him for maintaining the storage facility at Agra and Farrukhabad.*

9. *Another issue which was discussed during the hearing is whether the expression "storage up to the place of removal" used in the definition of input service will cover storage at the place of removal also. It is pointed out by the counsel that whenever a notification is issued with the provision that it is valid up to a particular date it is always considered as valid for the date specified for expiry. His argument is that expression "storage up to the place of removal" has to be interpreted to mean "storage up to and including the place of removal" because in trade practice no storage takes place between clearance from factory and reaching the place of removal and if interpreted to mean storage in transit till the goods reaches place of storage it will render the expression virtually meaning less.*

10. *Opposing the above contention, the ld. AR for Revenue submits that the Apex Court in the case of Maruti Suzuki Ltd. v. CCE - 2009 (240) E.L.T. 641 (S.C.) has observed as under :*

"The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product."

His contention is that going by the standard prescribed by the Apex Court in the said case services involved has no nexus with the manufacturing activity and credit on such services cannot be allowed. He also argues that services availed after clearance of the goods from the factory cannot be construed as an "input service" and therefore credit on such services cannot be allowed. According to him, the place of removal in the case of sugar manufactured by the assessee is the factory of the appellant from where the goods are cleared on payment of duty. He also argued that the expression storage up to the place of removal cannot include storage of the goods at the godowns even if the godowns are considered as place of removal.

11. *I have considered arguments on both the sides. I find that the question whether the place where goods are stored after clearance from the factory on payment of duty can be considered as "place of removal" for the purpose of Rule 2(l)*

of Cenvat Credit Rules, 2004 is no longer res integra because of the clarification issued by the C.B.E. & C. in the matter and approved by the decision of the Tribunal in the case of L.G. Electronics (supra) and the decision of Punjab & Haryana High Court in the case of Ambuja Cements v. UOI - 2009 (236) E.L.T. 431 (P & H) = 2009 (14) S.T.R. 3 (P & H). Therefore the godowns at Agra and Farrukhabad are to be considered as "place of removal" for the appellant notwithstanding the fact that sugar is an item subjected to specific rate of duty.

12. *I have also considered the issue whether the expression storage up to the place of removal would include the storage at the place of removal itself as argued by the Counsel for the Appellant. The normal interpretation of the words "up to" something is to include the something as is seen from the example quoted by the counsel. Going by such interpretation services for storage at the place of removal should be allowed as input services. If an interpretation is given that services only till the goods reaches the place of removal and not storage at the place of storage, the expression services in relation to storage up to the place of removal used in the inclusive part of the definition to input services becomes meaningless and it is not reasonable to adopt such an interpretation."*

15. Further in the case of Thiru Arooran Sugars Ltd. V/s Commissioner of Central Excise, Puducherry (Supra) Tribunal has held as under:-

"Appellant says that the final products were stored in the godowns hired at different places. When rent was paid to avail the godown facility, that suffered service tax. But learned Authority below disallowed Cenvat credit of service tax so paid.

2. *Revenue says that godown is not a place of removal. Therefore, there should be denial of Cenvat credit.*

3. *It does not appeal to common sense how Cenvat credit is impermissible when storage of the goods was made in hired godowns. That has direct nexus to the manufacturer to remove congestion in the factory. Therefore such integral connection does not call for denial of the Cenvat credit of the service tax paid on rent paid to avail godown facility. Accordingly, appeal is allowed."*

16. I find that the facts of the present case are squarely covered by the above decisions of the Tribunal and there is no reason to take a different view.

17. It is my considered view that the role of the Department is now no more of a tax collector but is that of tax facilitator. The endeavor of the Departmental officers should not only be to collect appropriate tax but also to guide the tax payers/Assessee and not to harass them. How a business has to be run cannot be dictated by the officers of the Department and it should be left to the prerogative and wisdom of the business enterprises to address their businesses exigencies in the best possible manner and the options available to them. In the present case, when there is not enough storage space within the factory of the Appellant-Assessee, what better option Department could have offered then the option availed by the Appellant-Assessee. These practices should be avoided by the officers of the Department in the larger interest of trade, commerce and industry and to contribute in true sense of nation building.

18. In view of the above discussions, the impugned order cannot be sustained and is accordingly set aside. Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 27.11.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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