REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70066& 70074/2015- dated 23/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

23/11/15

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/55850&55852/2014 SM	TRIVENI ENGINEERING&INDUS LTD UNIT KHATUAL, MUZAFFARMAGAR(UP)

Name and Address of Respondent: CCE MEERUT I, EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT(UP).

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH R.KRISHNAN,ADV
297-E, POCKET-II
PHASE-1,MAYUR VIHAR
DELHI.

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

<u>Ex. Appeal No.55850 & 55852/14</u>

Arising out of common OIA No. 39 & 40-CE/APPL/MRT-I/2014 dated 30.04.2014 passed by Commissioner of Central Excise (Appeals), Meerut I

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : yes

AC

M/s Triveni Engineering & Industries Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut I

RESPONDENT (S)

APPEARANCE

Shri R. Krishnan, Adv. for the Appellant (s)
Shri Ashok B. Kulgod, A.C. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

<u>DATE OF HEARING & PRONOUNCEMENT : 23. 10. 2015</u>

Final ORDER NO. 70066/2015
& FO 70074/2015

सीमा शुल्क, उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The Appellant, M/s Triveni Engineering & Industries Ltd., is in Appeal against common Order-in-Appeal No. 39 & 40-CE/APPL/MRT-I/2014 dated 30.04.2014 passed by Commissioner of Central Excise (Appeals), Meerut I.

2. Brief facts are that the appellants are engaged in the manufacture of cane Sugar and Molasses falling under chapter heading 17 of the schedule to CETA, 1985 and they are availing cenvat credit under Cenvat Credit Rules, 2004. A show-cause notice amounting to Rs.2,10,770/- was issued to the party on account of non-payment of amount equivalent to 10% upto 06.07.2009 and 5% w.e.f. 07.07.2009 of the clearance value of Press Mud and Baggase during the period from April,2009 to May, 2010 vide C.No.V(30) Dem/Adj./Triveni Engg./Mzn-I/106/10/6076 dated 03.12.2010, which was confirmed along with interest and equal amount of penalty vide OIO No.37/AC/MZN-I/2011 dated 16.11.2011 and further a show-cause notice for the period from May, 2008 to March 2009 for Rs.4,21,024/- was issued vide C.No.V(30) Dem/Adj/Triveni Engg./Mzn-I/103/10/6074 dated 03.12.2010, which was also confirmed along with interest and equal amount of penalty vide OIO No.38/AC/MZN-I/2011 dated 16.11.2011. In the mean time, the party had reversed Rs.73,653/- & Rs.31,296/- made under protest, against input & input service on the sale of Press Mud effected during the said period, which was intimated by them vide their letter dated 12.09.2011.

AC

3. Aggrieved with the OIO No. 37/AC/MZN-I/2011 and 38/AC/MZN-I/2011 both dated 16.11.2011, the party preferred an appeal with the Commissioner (Appeals), Central Excise, Meerut I, who decided the appeals of the party vide OIA No.235-36-CE/MRT-I/2012 dated 14.08.2012 in which both the said O-I-Os were set aside in toto, which has been accepted by the department as per information gathered by this office. On the basis of the said O-I-A.s, the party has filed the refund/re-credit application dated 16.01.2012 received in this office on 28.01.2013, requesting therein to allow refund/re-credit of Rs.73,653/-.

4. The application of the party was also forwarded to the jurisdictional Superintendent for verification and his report on admissibility of the re-credit. The jurisdictional Superintendent has submitted his report vide letter C.No.20-CE/SCN/TEIL/KHT/37/12/839 dated 07.10.13 under which he has submitted that the claim in question has been filed by the party on the basis of Order in Appeal No.235-236-CE/MRT I/2012 dated 14.08.2012. On perusal of the said order, it is found that nowhere in the order, the Commissioner (Appeals) has held to pay/reverse proportionate amount in the matter under 6(3A) of the Cenvat Credit Rules, 2004 in place of demand raised under Rule 6 (3) ibid. On perusal of record, it is also found that the amount in question was reversed by the party under protest. He has further added that on the issue of Press Mud and Baggase,regular SCNs are being issued to the party and last show-cause notice covering period upto May, 2013 has been issued by the Additional Commissioner of Central Excise, Meerut I. Further, M/s DSM Sugar

Acr

Mansurpur falling under the jurisdiction of this range is still presently reversing Cenvat Credit on proportionate basis on Press Mud.

5. The adjudicating authority, in response to the appellant's request for taking the re-credit/ refund of Rs. 73,653/- & Rs.31,296/- rejected the same only on the ground that the decision of Honourable Allahabad High Court in favour of the assessee in the case of Balrampur Chini Mills Ltd., has been admitted before the Apex Court. Being aggrieved, the Appellant preferred an Appeal before the ld.Commissioner (Appeals), who was pleased to uphold the Order-in-Original dt. 20.12.2013, dismissing the appeal. Being aggrieved, the appellant is before this Tribunal.

6. The ld. Counsel for the appellant points out that the issue stands settled by the Honourable Supreme Court in favour of the appellants in the case of Union of India Vs. DSCL Sugar Limited 2015 (322) ELT 769 (S.C.) whereby the Honourable Apex Court Vide order dated 24/7/2015, have held that Press Mud and Bagasse are waste and on the sale of waste the provisions of Rule 6 of Cenvat Credit Rules, are not attracted. Thus the issue stands decided in favour of the appellant. In this view of this matter I allow the appeals and further allow the appellant to take re-credit of the amount of Rs. 73,653/- & 31,296/- in their Cenvat credit account. In view of this, the appeals are allowed and the impugned order is set aside.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001