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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 08/06/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70531/2017-SM[BR] dated 14/02/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/100/2010	**DHAMPUR SUGAR MILLS LTD.** DHAMPUR, DISTT. BIJNOR (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s):

MS.STUTI SAGGI
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

4 Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No. E/100/2010-EX[SM]

(Arising out of Order-in-Appeal No. 258-CE/MRT-II/2009 dated 30/09/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

M/s Dhampur Sugar Mills Ltd **Appellant**

Vs.

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

Appearance:

Ms. Stuti Saggi, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 14/02/2017

FINAL ORDER NO. 70531/2017

Per: Anil Choudhary

The issue in this appeal by the appellant-assessee (Chemical division) is, whether Modvat/Cenvat credit can be taken on inputs which are received on the strength of bills/Challan of Sugar division. These bills are duty paying documents or not, and secondly whether the Cenvat credit is admissible on the inputs (Molasses, lost in transit) not received in the factory, not finally utilized for the manufacturing of final products, which are stated to be transit or handling loss.

2. The appellant company has got separate units namely sugar division, chemical division, paper and paper board division in the same premises. The appellants availed Cenvat facility in respect of duty paid on inputs and capital goods used in the manufacture of the final products. During the period May, 2000 to June, 2001, they availed Cenvat credit on Molasses received from the sugar division by the chemical division. It appeared to Revenue that the sugar unit retained duty paid Molasses for which no permission from proper officer under Rule 51A of Central Excise Rules, 1944 was obtained. Further sugar division had removed such duty paid Molasses under cover of Non-statutory Challans/Bills to the chemical division. The chemical division had availed Cenvat credit on such Molasses. It was further observed that the quantity of 293.45 Quintals were received short (Molasses, on which the appellant had availed Cenvat credit). Accordingly, Show Cause Notices dated the 09/05/2001, for the period from May, 2000 to January, 2001 and Show Cause Notice dated 26/02/2002 for the period from February, 2001 to June, 2001 were issued to the appellants proposing to disallow Cenvat credit amounting to Rs.34,76,457/- along with penalty. The Additional Commissioner vide the Order-in-Original disallowed the credit so availed on the ground that Non-statutory Challans/Bills were not the valid documents for availing benefit of Modvat credit. He also

disallowed the Modvat credit on the Molasses which were lost in transit, prior to receipt in the factory – chemical division.

3. This is the second round of litigation. Earlier this matter had come before this Tribunal. These very parties had come up in Excise Appeal No. E/6087 & 6088/2004- Ex (Br). Vide Final Order No. 908-909/2008- Ex(Br), this Tribunal noticed that the Commissioner (Appeals) have dismissed the appeal on the ground of limitation for 29 days delay, which was not proper and accordingly set aside the order with directions. Pursuant to remand the present impugned order dated 30/09/2009 was passed, rejecting the appeal, observing that the appellant have taken Cenvat credit on the strength of Non-statutory Challans/Bills which are not the prescribed documents and/or proper documents for taking Cenvat credit and secondly credit of duty is permissible only on that quantity of inputs which are used in or in relation to manufacture of the final products. In the instant case, as the loss is prior (or in transit) to receipt in the factory/chemical division. The quantity short receipt, is not used in or in relation to manufacture of the final products. Thus, denying the Cenvat credit on Molasses.

4. The ld. Counsel for the appellants urges that so far taking of credit on the basis of Non-statutory Challans/Bills is concerned, this issue is settled by this Tribunal, between these very parties had come up in Excise Appeal No.

E/1007/2002/NB (S) who vide Final Order No. 1829/2005-SM(BR) dated 20/09/2005, it was held as follows-:

> "5. Undisputed facts of the case are that the appellants having three units viz. sugar division, chemical division, paper and paper board division in the same premises. The sugar division cleared certain quantity of molasses on payment of duty thereafter this duty paid molasses was transferred to their chemical division. The chemical division availed the credit on the strength of invoices under which the duty has been paid. There is no dispute regarding the receipt of molasses in the chemical division. It is not the case of the Revenue that no molasses has been transferred to chemical division physically and only credit has been taken. The only objection of the Revenue is that credit cannot be taken on the strength of invoices which are in the name of self. As there is no dispute regarding duty payment on the molasses which were stored in kacha pit and its receipt in the chemical division, therefore, credit cannot be denied only on the ground that invoice was in the name of self. The impugned order is set aside and the appeal is allowed."

5. It was further urged that the said order has been accepted by the Revenue as no further appeal was preferred. So far the other issue of loss of molasses in transit is concerned and disallowance of Cenvat credit on the same. It

is urged that the same is normal loss in transit. In the case of normal loss the cost of lost units or quantity is spread over the balance quantity of inputs and/or raw materials, requiring no accounting treatment. It is further pointed out that the loss in the present case is 0.4% approximately. It is further pointed out that up to the extent of 2% in Molasses transit loss or storage loss is permitted, under Rule 8(4) of the U.P. Sheera Niyantran Niyamavali, 1974 read with CBEC Circular No. 261/K/82 dated 06/02/1982 read with Circular No. 261/136/97- C & E dated 15/01/1998. It is further urged that the quantum of normal loss amounts to usage in the production of final products. It is further pointed out that the Molasses remain in the physical control of the State Excise Inspector and the same are moved from one place to other after obtaining proper permit and/or gate pass in the prescribed form M.F.-4 from the State Excise Authority. Accordingly, it is urged that the Cenvat credit so disallowed may be allowed, with consequential benefits.

6. The ld. A. R. for Revenue relies on the impugned order.

7. Having considered the rival contentions and on perusal of record, I hold that the quantum of Molasses lost in this case, being admittedly less than 1%, is a normal loss and no Cenvat credit relating to the same can be disallowed, as the inputs lost in normal course of business and transport-transit are held to be utilized for manufacture of taxable output/goods. So far the other issue, of Cenvat credit

on the basis of Non-statutory Challans/Bills is concerned, I allow the appeal on this issue also following the precedents ruling of this Tribunal, taken notice of hereinabove. Accordingly, the appeal is allowed. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Cerified True Copy
19/06/2017
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