FAX : 0532-2400149

REGISTERED / AD

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

Dated: 08/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70791/2016-SM[BR] dated 31/08/2016

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/1460/2010	THE OUDH SUGAR MILLS LTD. P O HARGAON (SITAPUR) UP

Name and Address of Respondent

2 -C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

Copy To

3Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS ASSOCIATES
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110066

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 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,Punjagutta Hyderabad.-500082

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

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.1460/2010

Arising out of OIA No.68-CE/LKO/2010 dated 29/03/2010 passed by the Commissioner (Appeals), Central Excise & S.Tax, Lucknow.

For approval and signature:

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

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

M/s The Oudh Sugar Mills Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Lucknow

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 31.08.2016

Final ORDER NO. 70791/2016

Per Mr. Anil Choudhary :

The Appellant, M/s The Oudh Sugar Mills Ltd., is in Appeal against Order-in-Appeal No.68-CE/LKO/2010 dated 29/03/2010 passed by the Commissioner (Appeals), Central Excise & S.Tax, Lucknow, whereby Cenvat credit of Rs.21,02,678/- on TMT, CTD Bar, MS Bar, TOR Steel all falling under Chapter 72 of the CETA, 1985, have been held to be not eligible and/or admissible.

2. Brief facts of the case are that the SCN dated 23.04.2008, Cenvat credit taken during the period April, 2007 to September, 2007 for an amount of Rs.21,02,678/- on items like, TMT, CTD Bar, MS Bar, TOR Steel all falling under Chapter 72 of the CETA, 1985, was proposed to be disallowed as the same appeared to be contrary to the provisions of Rule 2 (k) of CCR, 2004. The admitted facts are that the appellants have fabricated the foundation and supporting for installation of the plants and machinery, so that, the machinery/equipment can function properly for the manufacture of excisable end-product. The Cenvat credit have been disallowed following the ruling of the Larger Bench of this Tribunal in the case of Vandana Global Ltd. observing that the items fabricated are immovable and cannot be termed as goods.

3. The ld.A.R. for the Revenue relies on the impugned order and also relies on the ruling of the Hon'ble Allahabad High Court in the case of Daya Sugar Vs. Commr. of Central Excise, Meerut I : 2015 (316) ELT 394 (All.).

4. Having considered the rival contentions, I find that the issue herein is squarely covered by the ruling of the Hon'ble Madras High Court in the case of India Cement Ltd. Vs. CESTAT, Chennai : 2015 (321) ELT 209 (Mad.), in favour of the appellant, under the fact that MS Rod, Sheet, MS Channel, MS Plate, Flat etc. were used for erection of capital goods being fabrication of structural to support the machineries , like, crusher, kiln, hoopers etc. and such structural, machinery could not be erected and would not function. Following the ruling of the Hon'ble Supreme Court in the case of Commr. of Central Excise, Jaipur Vs. Rajasthan Spinning & Weaving Mills Ltd. : 2010 (255) ELT 481 (SC), wherein it is held that the angle, plates etc. used for fabrication of chimney, were eligible for Cenvat credit. Accordingly, the Hon'ble High Court following the same, held that the taxable output cannot be achieved without fabrication of structural and foundation to install the machinery and plant, which are essential for the manufacture of taxable output. Thus, following the said ruling in the case of India Cements Ltd. (supra) and of Apex Court in Rajasthan Spinning (supra), I allow the appeal with consequential relief to the appellant and set aside the impugned order.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
4/10/16
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
SPS