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: 27/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70299-70300/2017-SM[BR] dated 16/03/2017

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/138/2010	**DSM SUGAR ASMOLI,** VILLAGE- ASMOLI, TEHSIL- SAMBHAL DISTT. MORADABAD (U.P.)-244004
2	E/139/2010	**DSM SUGAR ASMOLI,** VILLAGE- ASMOLI, TEHSIL- SAMBHAL DISTT. MORADABAD (U.P.)-244004
		Name and Address of Respondent
3		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

. Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/138-139/2010-EX[SM]

(Arising out of Order-in-Appeal No. 270-271/CE/MRT-II/2009 dated 27/10/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s DSM Sugar Asmoli, **Appellant**

Vs.

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

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 16/03/2017
Date of Decision : 16/03/2017

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

FINAL ORDER NO:-70299-70300/2017

Per: Anil Choudhary

The present two appeals are filed by the appellant-assessee against a common Order-in-Appeal No. 270-271/CE/MRT-II/2009 dated 27/10/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I.

2. The issue in these two appeals filed by the appellant-assessee is that the appellant is a manufacturer of V.P. sugar and molasses, whether they are entitled to Cenvat credit on various items like Plates, Shape & Section, MS Angles, GP Sheet, HR Coil, CR step, MS

Channels, Paints, Welding Electrodes etc. procured and used by the appellant as inputs or in manufacture of capital goods, which have been further used in their factory of production for manufacture of Excisable goods.

3. The detail of dispute and the period is as follows: –

Sl. No.	Appeal No. & Date (Commissioner Appeals)	O-I-O No. and date	period	Amount	
				Duty (Rs.)	Penalty (Rs.)
1.	85-CE/APPL/MRT-II/2009 dt.08.06.2009	34/Addl.Commr./M-II/09 dt.27.03.2009	January-06 to June-06	27,94,974/-	2,00,000/-
2.	86-CE/APPL/MRT-II/2009 dt.08.06.2009	28/Addl.Commr./M-II/09 dt.26.03.2009	January-07 to Mar-07	18,39,816/-	2,00,000/-

Vide two different show cause notices, the revenue objected to taking of Cenvat credit on the aforementioned items on the ground that during scrutiny of ER–1 return along with RG–23C part-II (Entry Book of duty credit on Capital Goods) and RG-23A part-II (Entry Book of duty credit on inputs), submitted by the appellant for the aforementioned periods, it has been noticed that the appellant has taken Cenvat credit on the aforementioned items treating them as Capital Goods or inputs as detailed in Annexure-A to SCN. So far items like Primer, Paint and Thinner are concerned which were used in painting of old and new plant and machinery, it appeared these are not covered under the definition of inputs. So far welding electrodes used in fabrication of capital goods and for repair and maintenance, it appeared that it is not covered under the definition of inputs. So far thinner, paints etc. used for painting of old plant and machinery, it appeared that they are not included in the definition of inputs. Further, on items like plates, GP sheet/coil, MS Channels/plates, HP Coil/plates, GP sheet, Jointing Sheets, etc, it appeared to revenue that these goods, neither fall under the specified chapter heading mentioned in Rule-2(a) of Cenvat Credit Rules, 2004 nor do they fall under any other clause of the said Rule. The SCN was adjudicated on contest and the proposed demands confirmed with penalty. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order, was pleased to reject the appeal, recording the finding that the goods in question do not fall under the category of capital goods as provided in Cenvat Credit Rules nor these items can be treated as input for capital goods, because the appellants had not produced any evidence that out of those materials of Chapter 72 of CETA, they had manufactured capital goods. It was further observed that, had the appellant manufactured capital goods out of the aforementioned materials, then in terms of Rule 12 of the Central Excise Rules, 2002, it should have been reflected in the monthly ER-1 returns filed by the appellant. Being aggrieved, the appellant is before this Tribunal.

4. The learned Counsel for the appellant Mr. Aalok Arora says that the allegation of concealment/suppression in the show cause notice is non-existent, which is evident from the plain reading of the show cause notice, which states–whereas during the course of scrutiny of ER-1 returns along with the RG–23C part-II submitted by the appellant for the period from January, 06 to June 06, it has been

noticed that the appellant has taken Cenvat credit on the items, more fully detailed in Annexure-A to the SCN by treating them as capital goods/inputs. Thus, it is evident that the revenue came to know regarding taking of the credit from the returns and documents filed by the appellant. The learned Counsel further states that the issue of allowbility of Cenvat credit is no longer res-integra and the same has been decided in favour of the appellant vide Final Order No.70219–70221/2017, dated 16/09/2016 in the case of Dhampur Sugar Mills Ltd in Appeal Nos.E/556–558/2010–SM wherein also under similar facts and circumstances, this Tribunal allowed the Cenvat credit relying on the Ruling of Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd reported at 2000 (214) ELT 510 observing that MS/SS plates used for repair and maintenance of machinery which are further used for manufacture of Excisable Goods, are eligible for Cenvat credit. Further, observed that Cenvat credit is available even on supporting structures fabricated in the factory of production which are essential to support the machinery which are used for manufacture of Excisable goods. The learned Counsel further states that prior to amendment in Rule 2(k) of CCR by introducing Explanation-II to Rule 2 (k) with effect from 07/07/2009, to exclude Cement, Angles, Channels, CTV, TMT bars and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods, cannot be held to be retrospective. This has been held in the case of Ultratech Cement Ltd Vs CCE & ST reported at 2017-TIOL-91-CESTAT-Delhi. Accordingly, the learned Counsel prays for allowing the appeal.

6. The learned A.R. for revenue relies on the impugned order.

7. Having considered the rival contentions, I find that the appellant had lead evidence before the Courts below that the items in question like Welding Electrodes, MS electrodes, MS plate, Shape and Section etc have been utilised for fabrication of mostly Capital Goods. The appellant had filed Annexure-A to the reply to show cause, wherein they have explained item wise usage whether the same has been used in fabrication of boiler and Millhouse or boiler or any other machinery or its part in the factory of production. The said explanation usage duly filed by, under certificate of the head of technical department of the appellant, has not been found to be untrue by the courts below. I, further find that the definition of inputs in Rule-2 (k) read with Explanation-2 provides-- input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Thus, in view of the specific provision for allowing Cenvat credit on inputs either used as inputs directly or indirectly in the manufacture of final products or used in the factory of production for manufacture of further capital goods which are further used in the factory of manufacturer, the Cenvat credit is allowable. Accordingly, I hold that the appellant is entitled to Cenvat credit on the items in question as discussed hereinbefore.

8. Accordingly, I allow the appeals and set aside the impugned order. The appellants will be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

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

akp

प्रमाणित प्रति / Certified True Copy
03/04/17
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