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

Dated: 27/04/2017

To

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

Final Order No. A/70408/2017-SM[BR] dated 23/03/2017

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/264/2011	**U.P. STATE SUGAR CORPORATION LTD. (UNIT-SAHARANPUR)** (NOW WAVE INDUSTRIES PVT. LTD. UNIT-SAHARANPUR. VILL. BIDVI, DISTT. SAHARANPUR (U.P.)

Name and Address of Respondent

2 -C.C.E. MEERUT I
Excise Chowk,Opposite Choudhary
Charan Singh University Mangal
Panday Nagar, Meerut - 250005.

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

Aalok Arora, Advocate
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

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/264/2011-EX[SM]

(Arising out of Order-in-Appeal No. 234-CE/MRT-II/2010-11 dated 30/04/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

M/s U. P. State Sugar Corporation Ltd. (Unit-Saharanpur)

Appellant

Vs.

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

Appearance:

Shri Aalok Arora, Advocate, for Appellant
Shri D. K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 23/03/2017

FINAL ORDER NO....70408/2017........

Per: Anil Choudhary

The issue in this appeal is, whether the appellant-assessee engaged in the manufacture of Sugar & Molasses who are also using Brass Tubes in Boilers, and after usage over a period of time cleared such used Brass Tubes to their job worker for remaking or conversion into new Brass Tubes and subsequently the job worker pursuant to remaking the Tubes have cleared to the appellant on payment of appropriate duty; whether duty have been rightly demanded from the appellant on clearance of old and used Brass Tubes vide Show Cause Notice dated 26/08/2009, for the extended period September, 2004 to September, 2008, amounting to Rs.3,91,396/-.

2. The Show Cause Notice was adjudicated on contest and the proposed demand confirmed with equal amount of penalty under Rule 25 read with Section 11AC of the Central Excise Act, 1944. Being aggrieved by the said order, the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order, was pleased to set aside the demand prior to 16/05/ 2005, but confirmed the demand for the period on or after 16th of May, 2005, along with interest and penalty at the applicable rate as applicable from time to time. Thus partly relief was given as Rule 3 (5A) of the Cenvat Credit Rules, 2004 was introduced vide Notification No. 27/2005-CE (NT) dated 16th of May, 2005, wherein it was provided that manufacturer shall on removal of waste and scrap of capital goods, reverse duty on the transaction value, as per the rates applicable, at the time of removal.

3. Being aggrieved by the aforementioned order, appellant is before this Tribunal. The ld. Counsel, Mr. Aalok Arora, has taken me through the facts on record and further have shown the sample bills, for removal of the used Brass Tubes, wherein Brass Tubes are removed to their job worker, as Brass Tubes and not as waste and scrap. In this view of the matter, his contention is that the provisions of Rule 3 (5A) of the Cenvat Credit Rules, 2004, are not attracted. Further, the situation is wholly revenue neutral, as to in case of payment

of duty by appellant the same was available as credit to the job worker who would have ultimately paid lesser duty on the return of the remade Brass Tubes to the appellant. Accordingly, he prays for allowing the appeal with consequential benefits.

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

5. Having considered the rival contentions and on perusal of record, I am satisfied that the appellant have removed used Brass Tubes as 'Brass Tubes' and not as 'waste and scrap'. In this view of the matter, I hold that the provisions of Rule 3 (5A) of the Cenvat Credit Rules, 2004, are not attracted. Accordingly, the appeal is allowed with consequential benefits. The impugned demand along with penalties is set aside.

(Dictated and pronounced in Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari