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: 11/04/2017

To

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

Final Order No. A/70348/2017-EX[DB] dated 02/02/2017

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/539/2009	J.K.SUGAR LTD. SINDHAULI ROAD, MEERGANJ, BAREILLY (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):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos. E/539/2009-EX[DB]

Arising out of Order-in-Original No.60/COMMR./M-II/08 dated 31.12.2008 passed by Commissioner, Customs & Central Excise, Meerut-II.

M/s. J.K. Sugar Ltd. ...APPELLANT

VERSUS

Commissioner of Central Excise-Meerut-II .....RESPONDENT

APPEARANCE

Shri Atul Gupta, Advocate for the appellants.
Shri Rajiv Ranjan (Joint Commr.), A.R. for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 02. 02. 2017

FINAL ORDER NO. 70348/2017

Per Mr. Anil Choudhary :

The appellant is manufacturer of sugar and molasses and he has also a co generation plant which generates electricity from the co-generation plant in which mainly bagasse is used as fuel. The appellant availed Cenvat credit facility on various inputs like polythene bags, Hydrochloric acid, process chemicals, Denatured spirit, Sulphur, Boiler chemicals, Phosphoric acid, Soda Ash, Caustic Soda, Seed Slurry, Light Soda ash, HDPE woven sacks, Sulphonic acid, Grease/Lubricating Oils, Input services and capital goods under the provisions of Rule 3 of the Cenvat Credit Rules, 2004. The case of Revenue against the appellant is that they are using the common Cenvat credit availed inputs and inputs services for generation of power. While part of the power generated is being used in the sugar mill for manufacture of dutiable final products, the remaining electricity is being sold out to U.P. Power Corporation. The electricity is an excisable goods attracting nil rate of duty and hence the same is to be treated as an "exempted goods" within the meaning of this term, as defined in Rule 2(d) of the Cenvat Credit Rules and since the appellant have not maintained separate account and inventory of the inputs/input services used in or in relation to the manufacture of dutiable final products (sugar and molasses) and exempted final products (electricity), the provisions of Rule 6(3) of the Rules would become applicable in respect of sale of electricity to U.P. Power Corporation.

2. Heard the parties.

3. Having considered the rival contentions, we find that the Hon'ble Allahabad High Court in the case of ***Gularia Chini Mills vs. Union of India, 2014(34) STR 175 (All.)*** on this very issue has held that electricity is not a excisable goods and in respect of sale of the

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electricity to U.P. Power Corporation, the provisions of Rule 6(3) of Cenvat Credit Rules, 2004 would not be applicable. Thus, following the ruling of Hon"ble High Court in the case of Gularia Chini Mills (*supra*), we hold that the impugned Order-in-Original is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed. The appellant shall be entitled to consequential benefits, if any, in accordance with law.

(Order was dictated in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

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

Patel/-

प्रमाणित प्रति / Certified True Copy
25/04/2017
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001