REGISTERED / AD

FAX : 0532-2400149

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

Dated: 18/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70455/2016-SM[BR] dated 12/07/2016

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/55729/2014	**STAR PAPER MILLS LTD** PAPER MILL ROAD SAHARANPUR U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-MEERUT-I EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

SINGLE MEMBER BENCH

E/55729/2014-EX(SM)

Dated of Hearing/decision: 12/07/2016

[Arising out of Order-in-Appeal No. 27-CE/MRT-I/2014 dated 22.04.2014 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I]

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Star Paper Mills Ltd. Appellant

Vs.

C.C. & C.E., Meerut-I Respondent

Appearance:
Present for the Appellant: Shri Atul Gupta & Shri Hrishikesh, Advocate
Present for the Respondent: Shri Ashutosh Nath (Assistant Commissioner) A.R

Coram: Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70455/2016

Per: Anil G. Shakkarwar

The present appeal is filed against Order-in-Appeal No. 27-CE/MRT-I/2014 dated 22.04.2014.

2. The brief facts are that the appellant is manufacturer of goods falling under Chapter 48 of schedule to Central Excise Tariff Act, 1985. The appellant has taken Cenvat credit of Rs.46,000/- on MS Plate, Channels, Angles etc. treating the same as capital goods. It appeared to Revenue that the said credit is inadmissible since the same do not qualified as capital goods under Cenvat credit Rules, 2004. Therefore, a show cause notice dated 20/08/2013 was issued for reversal of said Cenvat credit with other proposals. The appellant submitted before the original authority that by oversight they have treated the impugned goods as capital goods. However, the same were inputs and they were used for repair and maintenance of Plant and Machinery. The original authority appreciated the fact after perusal of Material Requisition Slips and held that the said inputs were used for maintenance of machinery and dropped the proceedings through Order-in-Original No. 09/AC/CE/SRE/2013 dated 28.11.2013. Aggrieved by the said Order-in-Original dated 28.11.2013 Revenue preferred appeal before the Commissioner (Appeals). Ld. Commissioner (Appeals) has held that the appellant has made only general claim regarding use of MS Plate, Channels, Angles for repair and maintenance without specifying as to which items were used for repair and maintenance of which machine and also held that it is undisputed that the impugned goods were claimed to the capital goods and set-aside Order-in-Original through impugned Order-in-Appeal dated 22/4/2014.

3. The appellant challenged the Order-in-Appeal No. 27-CE/MRT-I/2014 dated 22.04.2014 before this Tribunal on the ground that the proof of the use of impugned goods were submitted to the Original Adjudicating Authority and that bare reading of various material requisition slip clearly points to the usage of specific inputs which has been clearly indicated with respect to the machine for which it was used. They claimed that the inputs which were wrongly mentioned as capital goods was a procedural laps. The appellants also contended that the show cause notice is hit by limitation.

4. The appellant has reiterated the contention in the ground of appeal. The ld. DR as raised the objection that amount of duty involved is less then Rs.50,000/- and pleaded that the appeal need not been entertained. Further, he reiterated the finding of First Appellate Authority. He has relied on the Tribunal ruling in case of U.G. Sugar & Industries Ltd. reported at 2014 (311) E.L.T. 665 (Tri.-Del.) and argued that Tribunal in the said case has held that whereover the assessee has not been able to prove that the material is used for maintenance of machines, the credit has been denied.

5. Rival contention are taken in to consideration. The provisions of Section 35 B of Central Excise Act, 1944 provide that the Tribunal in its discretion can refuse to admit an appeal where duty or differential duty or fine or penalty is less than Rs. 50,000/- (Fifty thousand). I do not use such discretion in this case. The contention of the ld. Commissioner (Appeals) is that the impugned goods are treated as

capital goods by the appellant at the time of taking of credit and that the claim about use of inputs for maintenance is only a general claim. The ld. D.R. also relied as ruling of this Tribunal that when the use of inputs cannot be substantiated in repair and maintenance of machines then the credit has to be denied. I find that the impugned goods do not satisfy the definition of Capital Goods in said Cenvat Credit Rules 2004 and merely by such mention in the books of account, they do not loose the substantive eligibility to be treated as inputs. Further, I find that the original authority has gone through the material requisition slips and found as to where the impugned goods are used for maintenance and repair of machinery. Therefore, I do not find the two observations of ld. Commissioner (Appeals) to be sustainable. Therefore I set aside the order-in-Appeal and confirmed the Order-in-Original. Appeal is allowed in above terms with consequential relief if any.

(Dictated and pronounced in the open Court)

(Anil C. Shakkarwar)
Member (Technical)

(K. Gupta)

सत्यापित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (C.E.S.T.A.T.)
...-211001
36, एम. जी. मार्ग ...
36, M. G. MARG, ALLAHABAD-211001