

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

Dated: 08/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70354/2016-SM[BR] dated 17/01/2016

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/55730/2014	MEENU PAPER MILLS PVT LTD 9.5 K.M.BHOPA ROAD MUZAFFARNAGAR 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**3 Advocate(s) / Consultant(s):**

AALOK ARORA
 82-MISSION COMPOUND,
 SAHARANPUR-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 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)

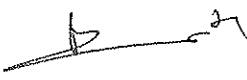
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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.55730/14

Arising out of OIA No.33-CE/MRT-I/2014 dated 25/04/2014 passed by
the Commissioner (Appeals), Central Excise & Customs, Meerut I

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 Meenu Paper Mills Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. Customs & S.Tax, Meerut I

RESPONDENT (S)

APPEARANCE

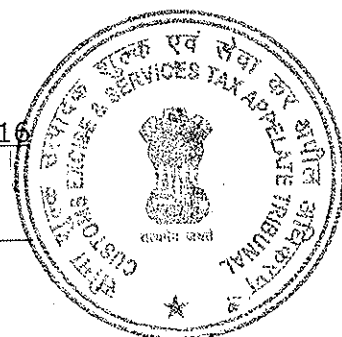
Ms.Rinki Arora, Adv. for the Appellant (s)
Shri Chatru Singh, Asstt. Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07.01.2016

Final ORDER NO. 70354/2016



Per Mr. Anil Choudhary :

The appellant is a manufacturer of Kraft paper and is in appeal against order in appeal dated 25/4/14 passed by the Commissioner (Appeals) Central Excise, Meerut I.

2.1 The issue involved in this appeal is whether the appellant, who had taken Cenvat credit of Rs.23,06,106/- during the period April, 2007 to May, 2012 on items, like, M.S. angles, plates, sheets, shapes, sections and chanel's et cetera, which was objected to by the Revenue pursuant to Audit during June and July, 2012 and the appellant on insisting by Revenue, debited Cenvat credit to the tune of Rs.5,70,549/- received during the Financial Year 2007-08, involving 50% of the due credit vide Entry No. 02 dated 1/4/13, under protest, which was informed to the Range Office and for the balance amount of Rs.17,93,114/- did not accept Revenue's proposal.

2.2 Show cause notice had been issued, whereas the appellant filed a refund claim on 23/4/13 with the Deputy Commissioner requesting therein to allow them to take back the credit of the amount of Rs.5,70,549/- debited under protest on 1/4/13 wrongly, as the capital goods received by them during the period in question were actually used for the manufacture of capital goods and as such credit availed was according to the Cenvat Credit rules.

2. SCN dated 01/07/13 was issued proposing to reject the refund claim of Rs.5,70,549/- and the same was adjudicated on contest by the O.I.O. rejecting the refund claim observing that although the appellant had increased their installed capacity from 5000 MT to 15000

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MT per day by fabrication of different items, but it does not entitle them to avail the Cenvat credit on each and every item used by them for the purpose, since entitlement of Cenvat credit was governed by the relevant provisions of CCR 2004 as it existed during the period concerned.

3. Being aggrieved the appellant carried the matter before the Id. Commissioner (Appeals) who, vide the impugned order was pleased to reject the appeal observing that the claim of the appellant under the category of capital goods on the ground that the items in question were used in the manufacture of capital goods and therefore Cenvat credit is available on the same as inputs in terms of Explanation under Rule 2 (k) of CCR is not acceptable as the appellant had not informed the Department about such manufacture of capital goods and that they have been unable to submit any clinching evidence in support of the claim that the said items were used in the manufacture of capital goods. The appellant have not shown any production for claim of the capital goods or the clearance of such capital goods for the captive consumption under invoice as required under Rule 11 of CER or their ER I returns for the period April, 2008 to March,2009. So far the contention of the appellant is concerned that the adjudicating authority has not considered the documentary evidence available on record namely, issue slips, copy of RG-1 showing production of capital goods and parts thereof duly supported by Certificate of Chartered engineer who has certified that the capital goods have been installed in the factory premises and are used in production of finished taxable goods.



It was further observed that the Chartered engineer, who certified that the impugned goods have been used in manufacture/fabrication of plant and machinery during 2007 to 2009, visited the factory on 25/10/12 and mentioned that the inspection report is final report prepared on basis of visible inspection as well as according to information produced before him by the Management of the appellant. Further, it was observed that the Chartered engineer certifying had visited the factory premises of the appellant after almost two years of manufacture of plant and machinery and thus, has not witnessed the fabrication of the said claimed of capital goods out of the impugned items. Accordingly, the said Certificate is doubted and held not reliable. Further, the material issue slips et cetera were held to be the private records of the appellant.

4. Being aggrieved, the appellant have carried the matter before this Tribunal on the ground that the order of Commissioner (Appeals) is cryptic as no finding have been given on the evidence available on record. That the Commissioner (Appeals) rejected the appeal on presumptions and assumption, which is fit to be set aside. The Id. Counsel further relies on the order in appeal dated 10/8/15 passed by the Commissioner (Appeals), Central Excise, Meerut I, being order in appeal No.MRT/EXCUS/000/APP I/165/15-16 in the appellant's own case wherein for the amount of Cenvat credit of Rs.17,92,114/- (Rs.23,06,106/- + Rs.5,70,549/-) under similar facts and circumstances for similar capital goods fabricated in the course of expansion of the installed capacity of the unit of the appellant, the Id.



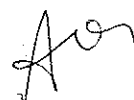
Commissioner (Appeals) have been pleased to allow the Cenvat credit observing as follows: –

“The main issue for decision before me, in the instant case, is whether credit on M.S. Angle, Plates, Sheets, Channels and Section etc. is admissible to the appellant or not as they are not covered under the definition of capital goods as given in Rule 2 (a) nor in definition of inputs as given in Rule 2 (k) of Cenvat Credit Rules.

In this regard at the very outset, I will like to discuss the definition of input. Input has been defined in Rule 2 (k) of the Cenvat Credit Rules, 2004. Explanation 2 to Rule 2 (k) reads as under :

‘Explanation 2 :- Inputs includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer (but shall not include cement, angles, Channels, centrally twisted deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods)’.

The appellant has contended that they had requested the department for amendment in their Central Excise Registration in respect of various items to be used in the manufacture of machinery for making paper or paper board, others paper cutting machine and parts thereof for enhancement of installed capacity of plant. The amended registration was given to the appellant by the Department on 18.06.2008. Also they have



maintained all the records of receipt of items of iron and steel on cenvatable invoices, its use for fabrication within the factory and on fabrication, the entry of said items in RG 1 from where they are issued for (captive) use in the manufacture of final products. In support, they also submitted the details of consumption of iron and steel items and plant and machinery fabricated from these inputs and regarding usage they submitted, the itemwise details duly certified by Shri Rajiv Jain & Associates, Chartered Engineer.

In this regard the adjudicating authority in the impugned order has accepted the contention of the appellant in above para but has held that the monthly return filed by the appellant do not show either the production of the claimed capital goods or its clearance for captive consumption under excise invoices. As regards the chartered engineer's certificate the adjudicating authority has doubted on its practical feasibility as the chartered engineer visit was made on 25.10.2012 but the material in question was used in fabrication and manufacturing of machines in 2007. The Adjudication authority has also observed that though storage tanks are defined as capital goods but the appellant failed to prove whether the same are storage tank or for any other purpose.

I have perused the certificate issued by the chartered engineer and it clearly mentions the quantity of items used in the fabrication of capital goods and the usage of the iron and steel items in question can easily be identified from it. Further I find no reason to doubt or disbelieve the subject certificate as



far as the fabrication of capital goods and their use is concerned.

I find that the appellant failed to show the production and clearance of claimed capital goods, in monthly return /ER1. However there is sufficient evidence which supports that the impugned goods viz. M.S. Angle, Plates, Sheets, Shape, Channels and Section, etc. have been received and used in the factory for fabrication of various items of machine, machinery parts accessories thereof and the fact is also supported by the Chartered engineer's certificate certifying the usage of same, therefore in my opinion, these goods qualify the definition of input in terms of Rule 2 (k) of CCR Rules, 2004 for the purpose of availing CENVAT Credit facility. There is enough corroborative evidence to prove that the inputs received have actually been used in the fabrication of capital goods.

In this context it is relevant to observe that the Hon'ble Supreme Court in the case of CCE Jaipur Vs Rajasthan Spinning Mills Ltd. [2010(255)ELT481(SC)] applied the "user test" theory (which was evolved in the Jawahar Mills Judgement ((2001)132ELT(S.C.)) to determine the eligibility of an items for taking credit as capital goods. The Apex court using this theory held that steel/plates and MS channels used in the fabrication of chimney formed an integral part of machinery as there was no case that steel/plates channels were not required for fabrication of chimney as integral part of diesel generating set. Hence benefit of credit was granted.



Further as regards Storage tanks, it in itself is a specified capital goods and falls under clause (vi) and qualifies the definition of capital goods in terms of Rule 2 (a) of CCR Rules, 2004 impugned iron and steel items used for manufacture of storage tank i.e., components of capital goods cannot be denied. Therefore, in view of discussions in foregoing paras, I find that the appellant is entitled for the credit of duty paid on M.S. Angle, Plates, Sheets, Shape, Channels and Section, etc. used in the manufacturing of capital goods. Similar, view has been taken in the following judgements.

The Principal Bench of the Hon'ble CESTAT in the case of Shahabad Cooperative Sugar Mills Vs. CCE, Panchkula, 2013(291) ELT 583 (Tri.-Del.), held that items like MS Plates, Angles, Joist & HR Sheets used to fabrication of machinery or parts thereof are covered by the definition of input and therefore eligible for credit. Further, the Hon'ble CESTAT in the case of CCE, Indore Vs. Hotline Glass Ltd., 2007(210)ELT 69 (Tri.-Del.), relying on the similar usage of the good in the factory of the assessee held that "Cenvat/Modvat - Input used in the manufacture of capital goods which in turn used in the manufacture of final product - Credit not deniable - Input viz. tor steel, cement, bars and angles used in the manufacture of furnace which is used for the manufacture of final products viz. picture tubes - Eligible for credit - Rule 57A of erstwhile Central Excise Rules, 1944 - Rule 3 of Cenvat Credit Rules, 2004".



Besides, reliance is placed on the Hon'ble CESTAT's decision/Final Order No. 101/2008-SM (BR) dated 05.12.2007, in the case of Dhampur Sugar Mills Ltd. Vs CCE, Meerut-II, wherein the CESTAT relying on the Hon'ble CESTAT's Judgement in the case of CCE, Indore Vs. Hotline Glass Ltd., 2007(210)ELT 69 (Tri -Del.), observed/ held that the items namely Steel Shape, Sections, M.S. Angle & Joint are used in equipment namely Fermentor, which in turn is used for manufacture of final product therefore, Cenvat credit on the items in question cannot be denied. Further, in the above context, the Hon'ble High Court's judgement in the case of CCE, Ludhiana Vs. Hero Cycles Ltd., 2007(207)ELT 663 (P&H) [as referred in the CESTAT's Final Order dated 05.12.2007 Ibid], is relevant, according to which the parts of capital goods used by assessee in fabrication, erection or installation of Cold Rolling Mill were held as eligible capital goods under Rule 57Q of the erstwhile Central Excise Rules, 1944 for availing Cenvat credit. The appellant's case is fully covered by the judgements of the Hon'ble High Court & the CESTAT.

In view of the foregoing discussions, it is clear that CENVAT credit cannot be denied to the appellant and accordingly, I accept the appeal of the appellant and pass the following order.

ORDER

The impugned order is set aside and the appeal No. 73-CE/APPL-I/MRT/2015 dated 04.03.15 is allowed".



Relying on the findings of Commissioner (Appeals) in the appellant's own case which includes the period during which expansion of installed capacity was going on and fabrication of plant and machinery was admittedly done and the appellant states that in the present appeal also the facts are similar. This Tribunal may be pleased to allow the appeal with consequential benefits. He further draws my attention to the facts taken notice in the order in original wherein it is admitted in para-4.1.4 that the appellant submitted the documents in support of their claim that the impugned items like plates, sheets, shapes and section, Channel etc. were used in fabrication of capital goods namely,

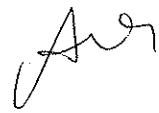
- (i) Copy of Stock Register of capital goods receipt, consumption, disposal and inventory for the manufacture of final products ;
- (ii) Copy of daily Stock Account (RG – I) ;
- (iii) Copy of datewise receipt with list of invoice of Cenvat claim ;
- (iv) Copy of datewise Material Transfer Note (issue slip) with propose of issue (each item) ;
- (v) Copy of delivery challans of goods manufactured ;
- (vi) Chart showing of specific location of capital goods ;
- (vii) Copy of form A-I application along with Annexure I and reply to letter of the Department ;



- (viii) Details of materials issued for the manufacture of machines and also details of scrap,
- (ix) Copy of Certificate issued by Chartered Engineer.

The appellant had also shown production of Conveyor – 5 Nos., Centi cleaner-2 sets, Vibrating Screen-3 Nos., ETP, Chimney, Boiler Section, and Tank et cetera. More particularly for the items fabricated related to the Cenvat credit in this appeal as taken notice of in para-4.1.6 in the order-in-original denying them. The appellant had given specific items fabricated along with the denial of the inputs used and the scrap generated. Material transfer note number, the dates, which are not disputed. The Id. Counsel further urges that under the Explanation 2 in Rule 2 (k) (II) input means and input includes goods used in the manufacture of capital goods which are further used in the factory of the Manufacturer. The Id. Counsel also relied upon the ruling of Honourable Gujarat High Court in the case *Mundra Ports & Special Economic Zone Ltd. Vs. CCEX. & Customs : 2015 (39) STR 726 (Guj.)* wherein for the items like, cement and steel used in construction of new jetty and other commercial buildings was held entitled to Cenvat credit in spite of the fact that construction of jetty was exempted. It was further held that amendment to Rule 2 (k) Explanation 2 of CCR with effect from 7/7/2009 was not clarificatory in nature. Relevant legislation if wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify the existing provision.

5. The Id. A.R. for Revenue relies on the impugned order.



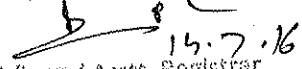
6. Having considered the rival contentions and on perusing of the records, I find that it is admitted fact that the appellant have enhanced their installed capacity of production from 5000 M.T. to 15,000 M.T. which have been approved by the Central Excise Department. It is further admitted fact that the expansion in capacity took place during the period 2007 to 2009, to which the amount in dispute (input credit) in this appeal relates. I further find that the Id. Commissioner (Appeals) in the appellant's own case as noticed hereinabove have by a speaking and reasoned order accepted the claim of Cenvat credit. Accordingly, I hold that the appellant is entitled to refund of Rs.5,70,549/- being the amount debited by them under protest on 1/4/13, with interest as per Rules. Thus, the appeal is allowed with consequential benefits.

(Pronounced in the open Court)


(Anil Choudhary)
MEMBER (Judicial)

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प्रमाणित प्रति / Certified True Copy


सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
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