CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 13/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70084/2016 SM dated 28/10/2015

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
	E/59553/2013	U.G.SUGAR & INDUS LTD SEOHARA, BIJNORE UP)

Name and Address of Respondent	CCE, MEERUT II OPP SHAHEED SMARAK DELHI ROAD, BHANSALI GROUND, MEERUT(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH KAMALJEET SINGH,ADV
J-144, PATEL NAGAR-1
GHAZIABAD(UP),

4 Bar Association, CESTAT, Delhi
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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.59553/13

Arising out of OIA No.45-CE/MRT-II/2013 dated 30.04.2013 passed by Commissioner of Central Excise (Appeals), Meerut II

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 U. G. Sugar & Industries Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut II RESPONDENT (S)

APPEARANCE

Shri Kamal Jeet Singh, Adv. for the Appellant (s)
Shri V. K. Shastri, A.C. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 28. 10. 2016

Final ORDER NO. 70004/2016

Per Mr. Anil Choudhary :

The Appellant, M/s U. G. Sugar & Industries Ltd., is in Appeal against Order-in-Appeal No.45-CE/MRT-II/2013 dated 30.04.2013 passed by Commissioner of Central Excise (Appeals), Meerut II.

2. Brief facts are that the appellant is a manufacturer of sugar and molasses etc. The appellant-assessee is in appeal against order in appeal dated 30/4/13, whereby the Cenvat credit availed of Rs. 87,211/- taken and utilised on H.R.Plates, shapes and sections, was confirmed along with equal amount of penalty.

2. The ld. Counsel for the appellant urges that the items being H.R.Plates, shapes and sections were utilized for repair and maintenance of the capital goods as due to constant wear and tear and corrosion the pipe line and structures need repair and replacement from time to time for manufacture of dutiable goods. Without the upkeep of the capital equipment being plant and machines which includes inspection and loading platforms, no manufacture can take place. The adjudicating authority had disallowed the credit only for the reason that capital goods do not include goods and commodities falling under chapter 72 of the Central Excise Tariff, 1985. The ld. Counsel further points out that without there being a finding as to the exact usage of the goods in question only on the presumption that the item being H. R. Plates, shapes and section have been used in the factory for fabrication of supporting structures and making platforms the demand have been confirmed. That the issue needs

proper examination and the impugned order be set aside for the redetermination in accordance with law.

3. The learned D.R. relies on the impugned order.

4. Having considered the rival contentions I find that capital goods or inputs utilised in maintenance of plant and machines being capital goods, the same is eligible for Cenvat credit. As no production can take place without proper upkeep of the plant and machinary. Further plant and machines also includes the loading platforms and inspection platforms. As the impugned order is silent on the exact usage of the inputs in question I set aside the same to the extent inputs relating to the amount of Rs.87,211/- and remand the matter to the adjudicating authority for fresh determination in accordance with law after ascertaining the utilization of the ~~same~~ said inputs in the light of the judgements namely, CCE Versus Rajasthan Spinning Mills Ltd : 2010 (255) ELT 481 (SC), Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi III : 2010 (270) ELT 465 (SC), Commissioner of Central Excise, Mysore Vs. ICL Sugar Ltd. : 2011 (271) ELT 360 (Kar.).

4. That the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

mm

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)