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/ 70006/2016 SM dated 08/1/2016

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
	E/60642/2013	KISHAN SAHKARI CHINI MILLS LTD GHOSI, MAU(UP)
	Name and Address of Respondent	CCE, ALLAHABAD 38 M.G.MARG, CIVILLINE, ALLALHABAD

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH VIKRANT KACKRIA,ADV
509, SECTOR-7,
PANCHKULA,HARYANA,

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 Nos.60642/13

Arising out of OIA No.25-CE/Alld./2013 dated 29/08/2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, Allahabad.

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 Kisan Sahkari Chinni Mills Ltd. ...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & S.Tax, Allahabad RESPONDENT (S)

APPEARANCE

Shri Monoj Kumar, Adv. for the Appellant (s)
Shri D. K. Deb, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 08.01.2016

Final ORDER NO. 70006/2016

Per Mr. Anil Choudhary :

The appellants, manufacturers of sugar and molasses, are in appeal against order in appeal dated 29/08/13 by which the disallowance of Cenvat credit have been upheld on the items being ceramic/refactory items brass tubes and supporting structures.

2. The brief facts are that the appellant undertook expansion of the sugar Mill during the period 1/3/94 to 13/1/98 and increased capacity from 1250 TCD to 2500 TCD and filed the declaration for availing credit of capital goods on 11/9/98. The Asstt. Commissioner had disallowed the modvat credit as the declaration was filed late. In the earlier round of litigation, vide final order dated 17/3/2003, this Tribunal condoned the late filing of declaration and remanded the matter to the adjudicating authority to decide whether the goods satisfy the definition of capital goods. Subsequently, vide order dated 18.5.2012, the Asstt. Commissioner allowed the Cenvat credit to the extent of Rs.33,08,662/- that is allowed in part, and disallowed the Cenvat credit of Rs.22,53,638/- being ceramic/refractory items and brass tubes brought into the factory of production prior to 16/3/95 and so far as items like, steel supporting structure, fabricated steel structures from M.S tubes and pipes falling under chapter 73, are concerned, on the admitted fact that these have been used for errection of sugar production machine, an amount of Rs.3,70,663/- was disallowed on the observation that such items do not confirm to the definition of capital goods in terms of Rule 57Q.

3. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order considering the definition under Rule 57Q CER, 1944, as it existed prior to 16.3.95 observing that at the material time ceramic/refractory items as well as brass tubes, are not included as capital goods. It is only after 23.7.96, these items were inserted/defined as capital goods vide notification number 14/96-CE. So far supporting structures are concerned, it was held that these items are neither specifically confirmed as machines/plant, equipment, nor are components, spare parts and accessories of any plant machinery et cetera and accordingly, the disallowance was upheld and rejected the appeal.

3. Being aggrieved the appellant is in appeal before this Tribunal. The ld. Counsel for the appellant states that under clause (b) of Rule 57Q, components, parts and accessories are eligible as per definition in Rule 57Q. The same being used with the boiler which is admittedly plant. The ld. Commissioner have erred in disallowing the same. So far as supporting structures are concerned he relies on the ruling of this Tribunal in the case of Shakumbari Sugar & Allied Indus. Ltd versus CCE, Meerut I 2012 (283) ELT 216 wherein the dispute related to the period November 1994 to August 1995. This Tribunal following the larger bench ruling of the case Jawahar Mills Ltd. Vs. CCE 1999 (108) ELT 47 held that prior to 16.3.95, items like, wires, cables control panels, welding electrodes et cetera were eligible capital goods. The Tribunal had relied on the ruling of the Hon'ble Supreme Court in

the case of Scientific Engineering House Private Ltd. Vs. CIT reported in AIR 1986 S.C. 338, wherein it was held that "the term plant" covers whatever apparatus is used by a businessman for carrying on his business – not his stock in trade which he buys or makes for sale, but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. The larger bench held that under the definition of capital goods, an item need not have direct nexus with the final product being produced. The ruling of the larger was upheld by the Apex Court reported at 2001 (132) ELT 3 SC. Accordingly, the Tribunal held that prior to 16.3.95, the terms "plant" which is defined as capital goods, hence, includes the MS angles, Channels, Sections, et cetera being components of such supporting structures would also be covered by the definition of capital goods. Accordingly, he prays for allowing the appeal with consequential benefit.

4. The learned A.R. for the revenue relies on the impugned order.

5. Having considered the rival contentions, I find that the ld. Commissioner (Appeals) is in error in denying the credit of ceramic/refractory items i.e brass tubes. I hold that they qualify as components and accessories of boiler (plant) and accordingly, the same is held eligible for modvat credit. Further, so far as supporting structures are concerned following the ruling of the Honourable Supreme Court in the case of Scientific Engineering House Private Ltd. (supra) and the ruling of this Tribunal in the case of Shakumbari Sugar and Allied Industries (supra), I hold that the appellant will be entitled

to modvat credit on supporting structures which have been brought in the factory of production till 15.3.1995.

6. Thus, the appeal is allowed. The appellant is entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

mm

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Certified True Copy
Asst. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001