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

Dated: 15/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70088/2015 dated 08/12/2015

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/1841/2007	TRIVENI ENGINEERING & INDUSTRIES LTD SHEIKHPURA, KHATAULI DISTT- MUZAFFARNAGAR(UP)
	Name and Address of Respondent	CCE ,MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR MEERUT (UP)250005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI-14

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 & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

DATE OF HEARING : 08/12/2015.
DATE OF DECISION : 08/12/2015.

Excise Appeal No. 1841 of 2007

[Arising out of the Order-in-Original No. 22/Commr./MRT-I/2007 dated 30/03/2007 passed by The Commissioner of Central Excise, Meerut-I.]

For Approval and signature :
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Triveni Engineering & Industries Ltd. — Appellant

Versus

CCE, Meerut - I — Respondent

Appearance

Shri Victor Das, Advocate – for the appellant.

Shri Kamal Puggal, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 70088/2015 Dated : 08/12/2015

Per. B. Ravichandran :-

The present appeal is against order dated 30/03/2007 of Commissioner of Central Excise, Meerut – I. The appellants are engaged in the manufacture of sugar and molasses liable to Central Excise duty. They have put up a power generation facility with baggase as main raw material. Some power generated was sold to U.P. State Power Corporation. They have availed Cenvat credit on various inputs and input services as per Cenvat Credit Rules, 2004. Some of these inputs are relatable to power generation plant. Revenue initiated proceedings against the appellant to recover 10% of sale price of electricity sold to U.P. State Power Corporation. The demand was in terms of Rule 6 (3) (b) of Cenvat Credit Rules, 2004. After due process an order dated 30/03/2007 was issued by the Original Authority. He confirmed a demand of Rs. 96,36,057/-. Aggrieved by this order, the appellant is before us.

2. Learned Counsel for appellant Shri Victor Das submitted that the provisions of Rule 6 (3) are not applicable to them. In any case they have reversed the entire credit on inputs attributable to the co-generation plant and hence demand of 10% of the value of electricity sold outside is not legally tenable. He relied on the decision of Hon'ble Allahabad High Court in **Gularia Chini Mills vs. Union of India** reported in **2014 (34) S.T.R.**

175 (All.) affirmed by Hon'ble Apex Court in **Union of India and ors. Vs. DSCL Sugar Ltd.** reported in **2015 – TIOL – 240 – SC – CX.**

3. Learned AR Shri Kamal Puggal, reiterated the findings in the original order. He submitted that in respect various inputs like lubricants, greases, turbine oil, chemicals etc. the appellant did not maintain separate records for receipt, consumption and inventory used for exempted electricity. Hence, the provisions of Rule 6 (3) are correctly invoked by the Revenue.

4. Heard both the sides and perused appeal records. The point for decision is the appellant's liability to pay 10% of sale price of electricity sold by them to outside party in terms of Rule 6 (3). The first point to note is that the appellant reversed the entire input credit amounting to Rs. 2,64,240/- attributable to the inputs used exclusively in co-generation plant, though only part of the electricity was only sold by them. As all the input credit stands reversed there is no ground to demand and recover 10% of sale value of electricity in terms of Rule 6 (3). On this ground alone the appellant will succeed against the impugned order.

5. Further, as held by the Hon'ble Allahabad High Court in **Gularia Chini Mills** (supra) as affirmed by Hon'ble Supreme Court in **Union of India and ors. Vs. DSCL Sugar Ltd.** (supra), and by the Tribunal in **DSM Sugar Mills Ltd. – 2014 (304) E.L.T. 382 (Tri. – Del.)** readwith ROM – Misc. order No. 57732/2014 dated 17/10/2014, electricity is

neither an excisable goods nor exempted goods and hence provisions of Rule 6 will not apply in such situation.

6. In view of the above discussion and case law, we find that the impugned order is not legally sustainable. Accordingly appeal is allowed setting aside the impugned order.

(Operative part of the order pronounced in the open court).

Sd/-

(Anil Choudhary)
Member (Judicial)

Sd/-

(B. Ravichandran)
Member (Technical)

PK

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
38, M. G. MARG, ALLAHABAD-211001