FAX : 0532-2400149

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

Dated: 05/12/2016

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71080-71081/2016-SM[BR] dated 18/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | E/1983/2008 | **DALMIA CHINI MILLS** VILL- JAWAHARPUR, DISTT-SITAPUR(UP) |
| 2 | E/1984/2008 | **DALMIA CHINI MILLS** VILL- JAWAHARPUR, DISTT-SITAPUR(UP) |
| | | Name and Address of Respondent |
| 3 | | -C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow. |
| 4 | | -C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow. |

Other Appellants and Respondents as per Annexure

Copy To
5Advocate(s) / Consultant(s):

SHEKHAR VYAS
P-13, SECTOR 12,
NOIDA,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/1983 & 1984/2008-EX[DB]

(Arising out of Orders-in-Appeal No. 80-81-CE/LKO/2008 dated 30/05/2008 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

For approval and signature:

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**

| | | |
|---|---|---|
| 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 Dalmia Chini Mills** **Appellant**

Vs.

**Commissioner of Central Excise, Lucknow** **Respondent**

Appearance:

Shri Jeevesh Mehta, Advocate &
Shri Arun Pathak, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**

Date of Hearing & Date of Decision: 18/11/2016

FINAL ORDER NO. 71080 - 71081/2016

**Per: Anil Choudhary**

The present appeals are filed by the appellant, M/s Dalmia Chini Mills, against Orders-in-Appeal passed by Commissioner of Central Excise & Customs (Appeals), Lucknow. The issue in these appeals by the appellant-assessee is whether they are entitled to Cenvat credit on the cement used in the foundation of machineries erected which have been further used for manufacture of taxable or dutiable products.

2. The brief facts of the case are that the appellant is engaged in the manufacture of Cane Sugar, Molasses & Ethyl Alcohol falling under Schedule to the Central Excise Tariff Act, 1985. They have taken Cenvat credit of inputs used in the foundation of various machinery and/or supporting structures. A table of details is as follows:-

| E/1983/2008 | E/1984/2008 |
|---|---|
| Impugned Order-in-Appeal NO. 80-CE/LKO/2008 Dated 30/05/2008 | Impugned Order-in-Appeal NO. 81-CE/LKO/2008 Dated 30/05/2008 |
| Order-in-Original No. 4/AC/STP/DEM/2008 dated 24/01/2008 | Order-in-Original No. 5/AC/STP/DEM/2008 dated 05/02/2008 |
| Period of Dispute March, 2006 | Period of Dispute March, 2006 to June, 2006 |
| Amount of Duty Rs.4,80,502/- + (Already Reversed before SCN) | Amount of Duty Rs.3,86,377/- + (Already Reversed before SCN) |
| Amount of Penalty Rs.30,00,000/- | Amount of Penalty Rs.30,00,000/- |
| Use of Cement for laying of foundation for Plant & Machinery & Supporting Structures of Machinery (Boiler & Turbines etc.) | Use of Cement for laying of foundation for Plant & Machinery & Supporting Structures of Machinery (Boiler & Turbines etc.) |

The Show Cause Notices were issued for proposing to disallow Cenvat credit on cement, as it appeared to Revenue that cement is neither capital goods nor spare or component of the plant & machinery. The appellant contested the Show Cause Notices by filing the reply, stating that during the period, they have undertaken expansion of Sugar Plant along with a new co-generation plant in their Sugar Mills. Accordingly, they purchased various plant and machinery items, equipments/ components and in the process of installation/erection, cement was utilized in the foundation work and supporting structure for erection of the machinery, without which the machinery cannot run and/or give outputs liable to be duty. The Show Cause Notices were confirmed vide separate Orders-in-Original and penalty was also imposed under Rule 15 of Cenvat Credit Rules, 2004. Being aggrieved the appellant have preferred appeals before ld. Commissioner (Appeals) who vide separate orders have upheld the rejection of Cenvat/Modvat of Input Credit on Cement relying on the ruling of Hon'ble Rajasthan High Court in the case of Union of India *Versus* Hindustan Zinc Limited reported at 2007 (2018) E.L.T. 503 (Rajasthan).

3. Being aggrieved the appellant have preferred the appeals before this Tribunal. The ld. Counsel for the appellant urges that the ld. Commissioner (Appeals) have relied on the ruling in the case of Union of India *Versus* Hindustan Zinc Limited (Supra) in relation to Cenvat credit on Cement, was taken during the period from 01/04/2002 to 28/02/2003, under the Cenvat Credit Rules, 2002. The said ruling is not applicable in their facts as the earlier Cenvat Credit Rules, 2002 have been replaced by the Cenvat Credit

Av

Rules, 2004, and under the present rules under Rules 2(a) read with 2(k) & 2(l) of Cenvat Credit Rules, 2004, they are entitled to Cenvat credit on Cement. Rule 2(k) of Cenvat Credit Rules, 2004 provides, credit means – all goods used in the factory by the manufacturer of the final products. All the goods ............... used in/ or in relation to manufacture of final products whether directly or indirectly and whether contained in the final products or not and includes lubricating oils etc., accessories of the final products cleared along with the final products, ............... Used in or in relation to manufacture of final products or for any other purpose, within the factory of production. Further, by virtue of explanation 2 in Rule 2(k), provides – "input" includes goods used in the manufacture of capital goods which are further used in the factory of manufacture.

4. The ld. Counsel urges that under the changed Rules & definition, it is an admitted fact that Cement has been used inside the factory of production and without erection of plant and machinery there can be no manufacture of dutiable goods. Accordingly, the impugned order be set aside and to hold appellant was entitled to Cenvat credit. He, further, relies on the ruling of Hon'ble Karnataka High Court in the case of Commissioner of Central Excise, Bangalore-II *Versus* SLR Steels Ltd. reported at 2012 (280) E.L.T. 176 (Karnataka) wherein the assessee had taken Cenvat credit on Steel & Cement used in manufacture of Storage Tank & Pollution Control Equipment. It was held that the assessee is entitled to take Cenvat credit as inputs under Rule 2(k) read with 2(l) of Cenvat Credit Rules, 2004 as the inputs is used in fabrication of capital goods. The view of Revenue that Storage

Tanks & Pollution Control Equipment was immovable property and was not excisable. Hence, in those circumstances, the duty paid on Steel & Cement which was used for the construction/manufacture of Storage Tank cannot be availed by the assessee as Cenvat credit. It was also observed that the inputs may not be necessarily used in manufacture of the final products. He also relies on the ruling of Hon'ble Madras High Court in the case of India Cements Ltd. *Versus* Customs, Excise & Service Tax Appellate Tribunal, Chennai reported at 2015 (321) E.L.T. 209 wherein it has been held that Cement and Iron & Steel used in supporting structure and foundation for erection of plant & machinery, are eligible as inputs.

5. The ld. A.R. relies on the impugned order.

6. Having considered the rival contentions, I find that the ld. Commissioner (Appeals) have erred in relying on the ruling of Hon'ble Rajasthan High Court in the case of Union of India *Versus* Hindustan Zinc Limited (Supra) as the said ruling was in respect of Cenvat Credit Rules, 2002 which have been replaced by Cenvat Credit Rules, 2004. Under the new rules the scope of input have been enlarged. That Cement and Iron & Steel used in supporting structure for erection of plant & machinery are eligible as inputs. It is further held that inputs are not necessarily to be used in the manufacture of final products. An input may be used even in relation to manufacture of final product. In the facts and circumstances of this case, cement has been admittedly used in the erection of capital goods, being machinery, without which manufacture of dutiable goods is not possible. Accordingly, both

the appeals are allowed with consequential benefits, if any, in accordance with law. The impugned orders are set aside.

(Dictated and pronounced in Court)

Sd/-

**(Anil Choudhary)**
**Member (Judicial)**

*Ansari*

प्रमाणित प्रति / Certified True Copy

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