FAX : 0532-2400149

REGISTERED / AD

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

Dated: 02/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70219-70221/2017-EX[DB] dated 22/02/2017

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/556/2010	**DHAMPUR SUGAR MILLS LTD.** DHAMPUR, DISTT. BIJNOR (U.P.)
2	E/557/2010	**DHAMPUR SUGAR MILLS LTD.** DHAMPUR, DISTT. BIJNOR (U.P.)
3	E/558/2010	**DHAMPUR SUGAR MILLS LTD.** DHAMPUR, DISTT. BIJNOR (U.P.)
		Name and Address of Respondent
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
5		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP) -
6		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To
7Advocate(s) / Consultant(s):

Pushpila Bisht
2, m.g. marg, civil lines, high court, allahabad

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

Appeal Nos. E/556, 557 & 558/2010-EX[SM]

Arising out of Order-in-Appeal Nos. 316-318-CE/MRT-II/2009 dated 27.11.2009 passed by Commissioner (Appeals), Customs & Central Excise, 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

Dhampur Sugar Mills Ltd. ...APPELLANT

VERSUS

C.C.E. Meerut II ...RESPONDENT

APPEARANCE

Shri Anag Mishra, Advocate for the appellants
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 16.09.2016

Final ORDER NO. - 70219-70221/2016

Per Mr. Anil Choudhary :

The issue in these appeals arising from common Order-in-Appeal relates to admissibility of Cenvat credit of items being plates, shape and section, MS angles, GP coil/sheet, HR coil, CR strip, MS channels, paints etc. procured and used by the appellant, a manufacturer of VP sugar and molasses during the period April, 2006 to September, 2007.

2. The Adjudicating Authority disallowed the Cenvat credit on the aforementioned items, and ordered recovery of the credit from the appellant under Rule 14 of CCR, 2004 and also imposed penalty. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who vide the impugned order have been pleased to allow the appeals in part. Further observed that most of the items in question procured by the appellant for use in their factory are known to be construction/fabrication materials in common trade parlance. As per the appellant, most of the items have been used for fabrication of alcohol tank, columns of analyser tank etc. in the distillery plant. The shapes and sections of iron and steel, plates etc. have been used for fabrication of various pipelines, equipments and making structures in the factory, making platform for having acess to the machinery. As per the certificate of usage, filed by the appellant- shape and section have been used for fabrication of new distillery for alcohol distillation and mill base, staging of boiler house columns etc. SR/CR sheets have been used in fabrication of ENA tanks and other tanks. SR/HR coils have been used in fabrication of tanks. SS plates have been used in fabrication of tanks. It is further observed that the

usage indicates used in erection and fabrication of supporting structure etc. Further observing that the supporting structures are not required for producing or processing of the manufactured goods. It was held that the same cannot be treated as capital goods nor can be construed as components, spare parts or accessories of capital goods and accordingly disallowance was upheld. On the issue of extended period whether invocable, the learned Commissioner observed that there are several conflicting decisions of the Tribunal and further observing that the law came to be settled by the ruling in the case of Vandana Global Limited by larger bench of this Tribunal, only in the year 2008 and accordingly held that the issue is wholly interpretational, and as such the demand for extended period is not proper and the same was set aside. Also the penalties imposed were set aside.

3. Being aggrieved, the appellant is before this Tribunal.

4. Heard the parties.

5. Having considered the rival contentions, I find that the issue of Cenvat credit on the items in question have been decided in favour of the appellant-assessee in their own case in preceding rulings of this Tribunal being a final order No 50522 dated 13.02.2014, final order No. 70061/2016 dated 28/01/2016 in appeal No. EE/2555/2011-SM, wherein relying on the rulings of Hon'ble Rajasthan High Court in Hindustan Zinc Ltd. 2000 (214) E.L.T. 510 wherein it has been held that MS/SS plates used for repair and maintenance of machinery which are further used for manufacture of final excisable products are eligible for modvat credit. Further storage tank is an eligible capital asset under Section 2 (a) (A) (VII). I also take notice of the ruling of Hon'ble

Madras High Court in the case of India Cement Ltd. wherein it has been held that steel items used in fabrication of supporting and staging structures for installation and operation of machinery are also eligible inputs, utilized in fabrication of plant and machinery, without which excisable final products cannot be manufactured. Accordingly, I allow these appeals and set aside the impugned orders to the extent it conforms the levy of duty and/or disallowance of input credit on the inputs in question.

(Order was dictated in the open Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
07/03/2017
सहायक पंजीयक / 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