

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

To

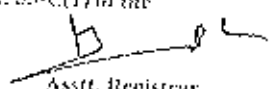
Dated: 17/03/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70115-70116/2016 SM dated 11/03/2016

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.

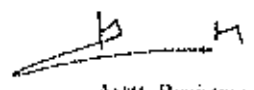

Asstt. Registrar

Application	Appel	Name and Address of Appellant
	SE/50716- 50717/2015	THE OUDH SUGAR MILLS LTD HARGAON, DISTT- SITAPUR UP-261121
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

- 3 Advocate(s) / Consultant(s) SH BIPIN GARG, ADV
B-1/1289-A, VASANT KUNJ
NEW DELHI-70
- 4 Bar Association, CESTAT, ALLAHABAD
- 5 Director Publications, Customs, Excise, I.P., Estate, Delhi
- 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishin 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 Rohtrak Road, New Delhi-110005
- 9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iseem 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 ICFAR 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**

S.T.Appeal Nos.50716,50717/15

Arising out of OIA No.259-260-ST/APPL-LKO/LKO/2014 dated 28/11/2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Lucknow

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 The Oudh Sugar Mills Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Lucknow

RESPONDENT (S)

APPEARANCE

Shri Bipin Garg, Adv. for the Appellant (s)
Shri Rajeev Ranjan, Joint.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 11.03.2016

Final ORDER NO. 70115-70116/2016 SM



Per Mr. Anil Choudhary :

The Appellant is a manufacturer of cane sugar, molasses and denatured alcohol and is in Appeal against Order-in-Appeal No. 259-260-ST/APPL-LKO/LKO/2014 dated 28/11/2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Lucknow.

2. The appellant availed Cenvat credit on the duty paid on inputs and capital goods and service tax paid on input services. The appellant regularly filed ER-I returns. During the period in dispute February, 2011 to August, 2011, the appellants have procured inputs for their distillery unit, being molasses, the main raw material. For procurement of the same, they have incurred service charges. The service provider charged service tax which was paid and Cenvat credit taken. SCN was issued as it appeared to revenue that credit on such is not allowable, accordingly, it was proposed to disallow the amount of Rs. 8,22,146.50+ Rs.30,07,188/-. The SCN was adjudicated on contest and the proposed demand confirmed by way of disallowance of Cenvat credit with interest and further, penalty was imposed under Rule 15 (1) of CCR of Rs.50,000/- + Rs.1,50,00/- totalling Rs.2 lakhs.

3. Being aggrieved the appellant preferred appeal before Id. Commissioner (Appeals) who vide common impugned order, was pleased to reject the appeal observing that from the scope of working in the agreement between the parties, it is apparent that service providers were appointed for performing liason works for the appellant to get allotment of molasses from the office of the Excise

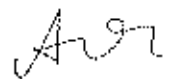


Commissioner and Controller of Molasses, Allahabad. The service of liaison work provided by the said service providers to the appellant is not a taxable activity under service tax net. It was also observed that the so called contract for the liaising work for procurement of molasses at a consideration of Rs.36/Rs.30 by Quintal appears to be speed money in the garb of commission/fee for liaising work. Being aggrieved the appellant is before this Tribunal.

4. The Id. Counsel for appellant states that molasses produced are under physical the control of the State Government under The Uttar Pradesh Sheera Niyamtran Adhinigaym, 1964 and Uttar Pradesh Sheera Niyamtran Niyamavali, 1974. He draws my attention to Section 7-A (1) of the said Act which provides - "any person who requires molasses for his distillery or for any purpose of industrial development may apply in the prescribed manner to the controller specifying the purpose for which it is required". Sub-section (2) provides - "on receipt of an application under sub-section (1) and after making such inquiry in the matter as he may think fit, the Controller may make an order under section 8 subject to considerations like, (i) the general availability of molasses ; (ii) various requirements of molasses ; (iii) the better utilization to which molasses may be put in the public interest ; (iv) the extent to which the requirements of the applicant are genuine ; (v) reasonable likelihood or otherwise of the molasses that may be obtained by the applicant being diverted to purpose other than those specified in the application and where the application is rejected in whole or in part, he shall record reasons therefor.

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4.1 Section 8 of the said Act provides that "The Controller [with the prior approval of the State Government by order require] the occupier of any sugar factory to [Transfer or sell or supply] in the prescribed manner such, quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order. Further Section 8 that "(1-a) provides - Notwithstanding anything contained in Sub-Section (1) the occupier of a sugar factory shall sell or supply forty per cent of the molasses produced in each quarter of a "molasses year" in the sugar factory to such chemical industries which are actual users of molasses and are granted licence under the united Provinces Excise Act, 1910. It is further provided that "such quantum of molasses as is not required by the said chemical industries may be sold or supplied by the occupier of the sugar factory to any other unit which is actual users of molasses with the prior approval of the Controller." Further from the Uttar Pradesh Sheera Niyamtran Niyamavali, 1974, Rule 2 (b) provides that "Allottee means a person in whose favour an order under Section 8 of the Act, has been made for the purposes of purchase of molasses, or to whom molasses for captive consumption has been transferred or supplied, from the occupier of a sugar factory. Further, Rule 8 of the said Rules provides - that (1) "The Controller may specify the order in which storage tanks in a factory shall be filled or emptied and such direction shall be binding on the occupier of the sugar factory." Sub-rule 8 (2) further provides that "No molasses



produced or stored in a factory in a particular molasses year shall be mixed with any molasses of the previous molasses year without the previous permission of the Controller in writing. Further Rule 21 of the said Rule provides for the prohibition of transferring use of molasses for the purposes other than that for which allotted. Further Rule 22 provides - "The molasses produced in a sugar factory shall be sold or supplied only to distilleries or other persons bonafidely requiring it for purposes of industrial development. Further Rule 25 provides that No molasses including the molasses for captive consumption, shall be removed from the premises of a sugar factory until it has been weighed or measured and a pass in Form M.F.4 has been issued. This pass shall be issued in pentuplicate by the occupier of the factory or by an officer authorized by the Controller in this behalf.

4.2 The Id. Counsel stated that from the provisions of the State Govt. Act and Rules for molasses, it is evident that even the appellant cannot transfer the molasses from their sugar mill to the distillery unit without the appropriate order and permission from the Controller of molasses. As a whole process is tedious, time-consuming, they have appointed liason agent for assisting the appellant in procuring the molasses required for their distillery unit for manufacture of taxable products, namely, denatured spirit. It is further evident from the bill of the service provider, they are registered with the Service Tax Department and have charged service tax on the service amount as agreed and accordingly, the appellants have rightly taken the Cenvat credit.



4.3 The Id. Counsel also points out that from the definition of input service given in rule 2 (1) in clause (ii) of CCR, 2004, the inclusive part of the definition, procurement of input is also a service eligible for Cenvat credit. Clause (ii) further provides that the manufacturer who uses input service whether directly or indirectly in or in relation to the manufacture of final product and clearance of final products up to the place of removal, is eligible to take Cenvat credit. The same is input service being in the nature of "procurement of inputs". The Id. Counsel have also taken through sample allotment orders by the State Excise Authority/Controller of Molasses, which specifically shows allotment in favour of the appellant of certain quality of molasses from their sugar factory to transfer to the distillery unit through the pipeline. In another instance, molasses which have been allotted from one, M/s Govind Sugar Mills Ltd. to the appellant, vide allotment order dated 21/2/11, to be transported through road by truck/tanker.

4.4 The Id. Counsel also relies on the ruling of the Division Bench of this Tribunal in the case of ITC Ltd. versus CCE, Hyderabad : 2010 (17) STR 146 wherein the assessee had taken credit of service tax on services used for Plantation activity. Under the fact that ITC is manufacturing paper, from trees, being raw material and investment was made for improving the Plantation. It was held that the activity has nexus with the production of cigarettes and further it was held that it is not necessary that the farmer should sell entire produce out of cloned saplings bought from appellant to the appellant alone. It



was further held that such services are covered as "input service" and Cenvat credit is admissible. The appellant further relies on the ruling of SMB Bench of this Tribunal in the case of VST Industries Ltd. Vs. CCE, , CE & ST (Appeal II), Hyderabad : 2013 (31) STR 357 (Tri.-Bangalore) wherein the assessee being a manufacturer of cigarette, had availed input service in the nature of advice to farmers to grow good quality of tobacco. Cost of such services were included in cost of production by the assessee. It was held that services are provided to farmers on behalf of the assessee, who paid for the same. Hence, assessee was receiptant of the service, as good quality tobacco was required for manufacture of good quality cigarettes. Accordingly, the Id. Counsel prays for allowing the appeal with consequential benefits.

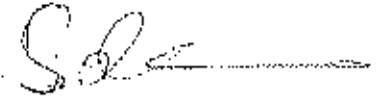
5. The Id. A.R. for revenue relies on the impugned orders.

6. Having considered the rival contentions, I hold that as molasses are under the strict control of the State Excise Authority, as is evident from the discussion in the aforementioned paragraph, the appellant have rightly incurred expenses for procurement of the same for their distillery unit, so as to manufacture the taxable output being denatured spirit/alcohol. There is no dispute that the assessee have not received the services and paid the service tax on the said services. Further, I hold that expenses incurred by the appellant for procurement of inputs, is eligible input service as defined in Rule 2 (1)(ii) of CCR, 2004. Accordingly, I find that the Id. Commissioner (Appeals) have erred in observing that the service provider have only obtained the permit to procure molasses but not the molasses which is



the actual raw material. Accordingly, I allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefit in accordance with law.

(Dictated and pronounced in the open Court)



(Anil Choudhary)
Member (Judicial)

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प्रमाणित प्रति / Certified True Copy
6.4.16
सहायक पंजीयन / Asstt. Registrar
सीपायुक्त, छत्तारगुरुदा एन सीका फर
अपील अधिकरण / (C.E.S.T.A.T.)
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38, M. G. MARG, ALLAHABAD-211001

