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: 27/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70301/2017-SM[BR] dated 21/03/2017

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/990/2008	Dalmia Sugars Ltd Vill:jawaharpur SITAPUR UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

Shekhar Vyas
P-13, Sector 12,
Noida,
Uttar Pradesh
201301

4 Bar Association, CESTAT, Allahabad

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/990/2008-EX[SM]

(Arising out of Order-in-Appeal No. 07-CE/LKO/2007 dated 30/01/2008 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Dalmia Sugars Ltd. **Appellant**

Vs.

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

<u>Appearance:</u>

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

<u>CORAM:</u>

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

Date of Hearing & Date of Decision: 21/03/2017

FINAL ORDER NO...70301/2017......

Per: Anil Choudhary

The present appeals are filed by the appellant, M/s Dalmia Sugars Ltd., against Order-in-Appeal passed by Commissioner of Central Excise & Customs (Appeals), Lucknow. The issue in this appeal 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 Notice dated 05/04/2007 was 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 Notice 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 Notice was confirmed vide Order-in-Original No. 23/Additional Commissioner/LKO/2007 dated 03/09/2007 and penalty of

Rs.2,00,000/-was also imposed under Rule 15 of Cenvat Credit Rules, 2004. Being aggrieved the appellant have preferred appeal before ld. Commissioner (Appeals) who vide the order, 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 appeal 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 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 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, in terms of Final Order No. 71080-71081/2016 dated 18/11/2016 in Appeal No. E/1983-84/2008-EX[DB], the appeal is allowed with consequential benefits to the appellant, if any, in accordance with law. The impugned order is set aside.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति / Certified True Copy
03\04\2017
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