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

To

Dated: 07/10/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70948-70949/2016-SM[BR] dated 30/09/2016

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	Appeal	Name and Address of Appellant
1	E/CROSS/72&71/2009	E/129-130/2009	CCE ALLAHABAD 38,M.G.MARG, CIVIL LINES, ALLAHABAD

Name and Address of Respondent

2 GOVIND NAGAR SUGAR LTD.
WALTERGANJ, BASTI, (U.P.),

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, Bhisham 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

7/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

APPEAL Nos. E/129-130/2009-EX[DB] With
CROSS Application No. E/CROSS/72 & 71/2009

(Arising out of Orders-in-Appeal No. 103 & 99/CE/ALLD/2008 dated 18 & 05/11/2008 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad.)

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

Commissioner of Central Excise, Allahabad. **Appellant**

Vs.

M/s Govind Nagar Sugar Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent, (AR), for Appellant
Shri Mayank Garg, Advocate for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 30/09/2016

FINAL ORDER NO...70948-70949/2016.

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Govind Nagar Sugar Ltd., against Orders-in-Appeal No. 103 & 99/CE/ALLD/2008 dated 18 & 05/11/2008 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad.

2. The issue in this appeal is availability of Cenvat credit on items namely H.R. Plates, M.S. Plates, M.S. Angles, Joints, Channels etc. used by the appellant manufacturer in fabrication of capital goods, staging structures and/or supporting structures of the machinery during the period from June, 2006 to January, 2007. The details of the two appeals are as follows:-

Appeal No.	E/129/2009	E/130/2009
Period	June, 2006 to July 2006	August, 2006 to January, 2007
Cenvat Crdit	Rs.31,68,690/-	Rs.46,76,573/-
Penalty	Rs.31,68,690/- u/Rule 15 (1) & 15 (2)	Rs.46,76,573/- u/Rule 15 (1)

3. The respondent/assessee appeared and contested the Show Cause Notice and pleaded that they have fabricated items of plant and machinery including staging and supporting structures for installation and/or facilitating operation of the plant and machinery and accordingly they have correctly taken the Cenvat credit. The Show Cause Notice was adjudicated on contest and the proposed demand

was confirmed along with penalty under Section 15 (1) of Cenvat Credit Rules, 2004, an additional penalty of equal amount was also imposed for the period from June to July, 2006 under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

4. Being aggrieved the appellant had preferred appeal before ld. Commissioner (Appeals), who have vide separate Orders-in-Appeal have been pleased to allow the appeals, allowing the Cenvat credit, recording the finding that under Explanation 2 of Rule 2(k) of Cenvat Credit Rules, 2004 clarifies that input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. The appellants have fabricated various items of capital goods. There is no dispute on receipt of the items in the factory of the appellants and their use. In these circumstances, the inputs in dispute have been admittedly used for fabrication of capital goods and as such assessee are eligible for taking Cenvat credit. Reliance was also placed on several rulings of this Tribunal.

5. Being aggrieved the Revenue is before this Tribunal on the ground that ld. Commissioner (Appeals) have failed to take into consideration that the items in question falling under Chapter 72, 73, 76 have been used in the fabrication of staging and supporting structures. The assessee themselves have claimed that during the expansion of the plant/mill these items were used in fabrication of staging and

supporting structures. Staging and supporting structures are not capital goods within the meaning of Rule 2(a) of Cenvat Credit Rules, 2004. Further, the use of the items in question for manufacture of capital goods has not been established. The ld. A.R. prays for allowing the appeal.

6. The ld. Counsel appearing for the respondent/assessee urges that the issue is not longer res-integra. For argument sake, the contention of the Revenue is that the appellants have fabricated supporting and staging structures. The Hon'ble High Court of Madras in the case of India Cement Ltd. reported at 2015 (321) E.L.T. 209 wherein have held that use of the inputs for fabrication of structurals to support various machine like crusher, kale, hopper, etc. without such structural, machinery could not be erected and would not function being undisputed fact, the assessee is entitled to Cenvat credit under Rule 2(A) of Cenvat Credit Rules, 2004. Accordingly, he prays for dismissing the appeal of Revenue.

7. Having considered the rival contentions, I am satisfied that the Revenue have not disputed the contention of the appellant that they have fabricated several capital goods as their factory was under expansion. Further, as per the grounds of the Revenue, even if the, appellant have fabricated staging structure and supporting structures the same are eligible for Cenvat credit in view of the Ruling of Hon'ble Madras High Court in India Cement Ltd. (supra). Accordingly, the appeal of Revenue is dismissed. The respondent assessee

will be entitled for consequential benefits, if any, in accordance with law. Cross objections are also disposed of. Sd/-

(Dictated and pronounced in Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
25.10.16
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