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: 03/07/2017

To

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

Final Order No. A/70591-70592/2017-SM[BR] dated 30/06/2017

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/1452/2011	**DHAMPUR SUGAR MILLS LTD** Dhampur N.Rly, Distt- Bijnor(UP)
2	E/1635/2011	**AMIT SHARMA, DGM (COMML.)** DHAMPUR SUGAR MILLS LTD. DHAMPUR N. RLY. DISTT. BIJNOR (U.P.)
		Name and Address of Respondent
3		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
4		-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

5Advocate(s) / Consultant(s):

SMT. PUSHPILA BISHT
ADVOCATE
CHAMBER NO.-24 A,HIGH COURT,ALLAHABAD

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 Nos. E/1452 & 1635/2011-EX[SM]

(Arising out of Order-in-Appeal No. 64-CE/MRT-II/2011 dated 28/02/2011 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

Dhampur Sugar Mills Ltd. (in Appeal No. E/1452/2011),

Amit Sharma DGM (Comml.) (in Appeal No. E/1635/2011)

Appellant

Vs.

Commissioner of Central Excise, Meerut-II (now Hapur)

Respondent

Appearance:

Smt. Pushpila Bisht (Advocate)	for Appellant
Shri Gyanendra Tripathi Assistant (AR)	for Respondent

CORAM:

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

Date of Hearing	:	30/06/2017
Date of Decision	:	30/06/2017

FINAL ORDER NOs.70591-70592/2017

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil Choudhary

The issue in these appeals is allowability of Cenvat Credit on items like M.S. Rounds, Structure Parts, Shrinkomp, G.I. Structures, etc.

2. The brief facts are that the appellant is a sugar factory engaged in manufacture of Sugar and Molasses and Chemicals. The appellant availed Cenvat Credit on inputs and capital goods. A show cause notice dated 20 May, 2009 was issued objecting to taking of Cenvat Credit during the month

of May, 2008, amounting to Rs. 2,92, 691/- on items like Cable Tray, M.S. Rounds, Foundation Bolt, Structure Parts etc. further interest and penalty was also proposed. Further Shri. Amit Kumar Sharma DGM Commercial was also required to show cause why penalty be not imposed under Rule 26 of CER, 2002.

3. The SCN was adjudicated on contest vide Order-in-Original dated 29 October, 2010 passed by the Assistant Commissioner allowing credit of Rs. 51,377/- on items like Cable Tray, Foundation Bolt, Bolt for Fibrizer/Cuffer etc. Further credit taken on MS Rounds, Structure Parts, G.I. Structures, Unalloyed Cold Rolled Coil etc., were disallowed amounting to Rs. 2,41,314/- with further direction to pay interest and also penalty of Rs. 2,41,314/- was imposed under Rule 15 of CCR read with section 11 AC of the Act. Penalty of Rs. 10,000/- was also imposed on Shri Amit Sharma, DGM Commercial. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who have been pleased to allow the appeal in part and have set aside the penalty imposed on the appellant company, ~~law~~ observing that there is no contumacious conduct on the part of the appellant and the issue is wholly inter~~rupted, null~~ pretational in nature. However, the learned Commissioner did not interfere with the penalty imposed on the employee Shri Amit Kumar Sharma finding that there is no separate appeal filed by him.

4. Being aggrieved the appellant company and the - employee Shri

Amit Kumar Sharma are before this Tribunal in appeal. The learned counsel for the appellant states that the learned Commissioner made factual errors in the order while observing that although the appellant produced the documents with regard to the use of the items in question used in fabrication of various machinery without any support of Chief Engineers/Chartered Engineers certificate, and failed to provide the name of the capital goods/parts of the capital goods which were fabricated out of the impugned items. The learned counsel points out from the reply to the show cause notice that they had given the specific use of each and every item, disputed vide the show cause notice. So far the items in dispute before this Tribunal, she explains –

(i) So far M.S. Round is concerned, these items are actually Globe valve, Round and S.S. Pipe, but have been incorrectly shown as M.S Round. These items have been used in the Boiling Section. Globe valve is used to allow the outlet and inlet of water from the pipelines to the Pan. Round is used in the body of the pipeline which is attached to Pan and S.S. pipes are used to facilitate inflow of cane juice in the Pan of the Boiling Section. All these items are components of Pan for boiling of the sugar cane juice. Thus, these are components of the Boiler or Boiling Pan.

(ii) Shrinkomp: Rs. 3,635/-, this material is a chemical which is applied on the steam pipe lines before covering these pipe lines with insulation sheets in order to reduce loss of heat.

(iii) Structure Parts: Rs. 18,029/-, structure parts like Foundation Bolt are used in supporting machinery, particularly 170 TPH Boilers. Without these supporting parts/structure the boiler cannot be built upon and operated. This is an essential component of the boiler.

(iv) G.I. Structures: Rs. 50,184/- ~~Thus~~ The G.I. Structures are fitted to the exhaust pipe line of 30 M.W. Turbine with nuts and bolts and spring washer. This is an essential part to run the Turbine.

(v) Unalloyed Cold Rolled Coil: Rs. 1,45,226/-. This coil is used for insulation of steel pipe lines of the boiler to protect the pipe lines from excessive heat and loss of steam. As the steel pipe lines are used for movement of ~~convenience for~~ steam from the boiler, these are also components and accessories of the boiler.

5. The learned ~~ly~~ Adv. further states that Explanation to Rule 2(k) of CCR provides that, input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer, and in the definition of Capital Goods in Rule 2(a) "capital goods means and includes components, spares and accessories of the goods which are capital goods falling under Chapter 82, 84, 85, 90, etc. Accordingly, the credit taken is correct and the same ~~will~~ may be allowed.

6. Learned AR for the Revenue relied on the impugned order.

7. Having considered the rival contentions I find that the items in dispute are either components of capital goods or inputs which have been used in manufacture of capital goods which are further used in the factory of the appellant for manufacture of dutiable goods like sugar and molasses etc. Accordingly, I hold that the appellant is entitled to Cenvat Credit on the items in dispute. Accordingly, these appeals are allowed and also set aside the penalty imposed on Shri Amit Kumar Sharma, DGM Commercial of the appellant company.

(Dictated and pronounced in Court)

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

Anku