FAX : 0532-2400149 REGISTERED / AD

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

Dated: 26/05/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70221/2016-SM[BR] dated 19/05/2016

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/MISC/1210/2006	E/2437/2006	THE OUDH SUGAR MILLS LIMITED HARGAON, 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):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,UP

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

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

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

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

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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 No.E/2437/06-EX(DB)

(Arising out of Order-in-Appeal No. 32-CE/LKO/2006 dated 10/05/2006 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

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

The Oudh Sugar Mills Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Rajesh Chibber (Advocate), for Appellant
Shri H.M. Dixit, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 03/11/2015
Date of Decision : 03/11/2015

FINAL ORDER NO 70221/2016

Per: Anil Choudhary

This appeal is directed against the Order-in-Appeal No. 32-CE/LKO/2006 dated 10/05/2006 which upheld the order in original that confirmed the denial of Cenvat, but deleted the penalties on the appellant.

2. The relevant facts that arise for consideration are that the appellant is manufacturer of sugar and molasses and availed modvat credit on the goods like H.R.Coil, plates, G.P. Sheet Plain Plates, Steel Flats, Aluminum Coils, Shape & section etc. Show cause notice was issued to the appellant proposing to deny the Cenvat credit on these items on the ground that these goods are not capital goods nor they are inputs but they are for construction purposes, or repairs of capital goods, and they would not fall under the category of accessories. The adjudicating authority confirmed the demand and also imposed penalty. On an appeal, the Commissioner (Appeals) upheld the confirmation of demand but set aside the penalties imposed on the appellant. Hence this appeal.

3. The learned Advocate appearing on behalf of the appellant submits that the goods in question were used by them in the factory and list of which has been given to the lower authorities which itself shows that these are being used in the machines or repair & fabrication of machinery which produce the final product i.e. sugar

and molasses. It is his submission that the issue is squarely covered by the decision of the Tribunal in the case of Uttam Sugar Mills Vs CCE Ghaziabad 2006 (74) RLT 697 which relied upon the decision of the Tribunal in the case of Simbholi Sugar Mills 2000 (39) E.L.T. A-294.

4. The learned DR on the other hand, submits that these items could not be considered as capital goods nor they could be considered as inputs. It is his submission that these items did not play any specific role directly in the production of Sugar.

5. Considered the submissions made by both sides at length and perused the records. The issue involved in this appeal is denial of Cenvat credit to the appellant on Plain Plates, Steel Flats, Sheets, Aluminum Coils, etc. The appellant has given the uses of these items in his factory which reads as under:-

1. *Aluminum Coil*
Has been used in lagging of Pan, Quad and Semikestner (which are capital goods).
2. *H.R.Coil Plates*
Have been used in bagasse carrier, Cane carriers and Drier House elevators.
3. *G.P. Sheet) Have been used in Juice trough and high pressure steam line lagging.*
4. *G.C.Sheet) and also for making template & providing alignment of various heavy/medium machines.*
5. *H R.Sheet*
It is M.S. Plate used in Sugar Hopper and Sugar Grader to enhance their capacity.
6. *Tor Steel*
Has been used in new Quad, Sugar Hopper addition and foundation.
7. *C.Plate*
Has been used in making working platform of various machines, new Quad and Sugar Graders.
8. *M.S.Bar*
Has been used in rake carrier and bagasse Belt conveyors.
9. *Shape & Section*
10. *-do-* *These goods have been used in sugar Hopper,*
11. *Section (Channel)* *Sugar Graders & new Quad to enhance*
12. *Shape & Section* *capacity, Strengthening & re-enforcement*

13. -do- of plateform.

14. <u>H.R.Sheet</u>

Has been used in new Quad, Sugar Hopper, Drier House elevators

15. <u>G.P. Sheet</u>

Has been used in juice trough and high pressure Steam line lagging and also for making tamplate and providing alignment of various heavy/medium macdhines.

From the plain reading of the above reproduced paragraph, it would indicate that these goods were used in repair/fabrication of machines or as accessories which are required for the purpose of manufacture of sugar. Further the Central Excise Tariff Act, 1985 has specifically indicated, the machines which are used for manufacture of sugar would fall under Chapter heading 84.30. This would indicate that all the machineries that are used in the sugar factory for the manufacture of sugar would fall under heading 8438.20 and eligible for Cenvat credit as capital goods. It that be so, any accessories spares or components used in the repair of manufacture or fabrication of machinery, which is further used for manufacture of sugar and molasses would be eligible for the benefit of Cenvat credit. I find that the decision of the Tribunal in the case of Uttam Sugar Ltd. is on identical issue. The Tribunal has followed the decision of the Division Bench in the case of Simbhaoli Sugar Ltd. Which has been upheld by the Hon'ble Supreme Court.

6. In India Cement Ltd. Vs Cestat Chennai, 2015 (321) E.L.T. 209, the Hon'ble Madras High Court have held that M.S. Rod, Sheet, M.S. Channel/Plate/flat, etc, used for erection/fabrication of structural support for various machines like Crusher, Kiln, Hooper, etc, without which such structural, machinery could not be erected and would not

function, held are eligible for Cenvat credit under Rule 2(a)(A) of CCR, 2004. Since the issue involved in this case is squarely covered by the decision of the Tribunal in the case of Simbholi Sugar Ltd and Uttam Sugar Ltd., respectfully following the same, the impugned order is set aside as it denies the Cenvat credit to the appellant on the goods inquestion. The appeal is allowed, with Consequential benefits.

(Order Operative Part pronounced in the Court)

(Anil Choudhary)
Member (Judicial)

नप

प्रमाणित प्रति / Certified True Copy
9.6.16
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