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

Dated: 12/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70061/2016 dated 28/1/2016

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
	E/2555/2011	DHAMPUR SUGAR MILLS LTD DHAMPUR, DISTT-BIJNOR UP

Name and Address of Respondent	CCE, MEERUT II OPP SAHEED PARK(NEAR ASHOK KI LAT)DELHI ROAD, MEERUT(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s MS PUSHPILA BISHT,ADV
C-345, INDIRA NAGAR
LUCKNOW(UP)

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon 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 ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal No. E/2555/2011 (SM)

[Arising out of Order-in-Appeal No. 191-192-CE/MRT-II/2011 dated 27.6.2011 passed by Commissioner (Appeals) Central Excise, Meerut-II]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Dhampur Sugar Mills Ltd. Appellant

Vs.

CCE, Meerut -II Respondent

Appearance:

Present for the Appellant: Ms. Menka Tripathi, Advocate/Ms. Pushpila Bisht, Advocate
Present for the Respondent: Shri Pawan Kumar Singh (Supdt.) (AR)

Coram: **Hon'ble Shri Anil Choudhary, Judicial Member**

Date of Hearing/Decision: 28/01/2016

Final **ORDER NO.** 70061/2[illegible]

Per: Anil Choudhary

The appellant a manufacturer of sugar and molasses is in appeal against Order-in-Appeal dated 27/6/2011 by which Cenvat credit on AC corrugated sheets used to cover the rubber belt of bagasse ~~of by glass~~ handling system through which the bagasse is feeded in the furnace of the boiler have been denied as well as on HR SS plate used for fabrication of the body of the storage tank of Ethyl Acetate in the chemical plant have been denied.

2. Vide the show cause notice dated 21/4/2010, the revenue objected to taking of Cenvat credit on A.C. corrugated sheets, HR SS sheet, aluminium coil and aluminium sheet, as it appeared that the appellant have taken Cenvat credit in violation of the provisions of Rule 2 and 3 of CCR's. The appellant contested the SCN and the same was adjudicated vide Order-in-Original dated 21/2/11 observing that the items in dispute are used in the plant for general-purpose and Cenvat credit is not admissible, the proposed demand was confirmed Rs.1,31,825/- along with interest and further penalty of equal amount was imposed under Rule 15 of CCR read with Section 11 AC of the Act. Further personal penalty Rs. 50,000 was imposed on Amit Sharma, Deputy General Manager (Commercial). Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the

impugned order allowed the appeal in part, allowing Cenvat credit to the tune of Rs. 26, 533/- on aluminium sheet and aluminium coils and upheld the disallowance of Cenvat credit on AC corrugated sheet & HRSS plate, amounting to Rs.1,05,292/-.

3. Being aggrieved the appellant is before this Tribunal against the amount sustained. The ld. Counsel for the appellant states that so far HR SS plate is concerned the issue is no longer res Integra and it has been held in their own case ~~before~~ by this Tribunal in Excise Appeal Number 3902/2005 – SMB vide with the Final Order dated 26/11/2007, it was held that SS plates, MS plates etc. are used as raw materials of the capital goods. Further although they are used in repairing damage part of machinery, being capital goods. The Tribunal followed the ruling of Honourable Rajasthan High Court in the case of Hindustan Zinc Ltd 2000 7214 E.L.T. 510 wherein the High Court have held that MS/SS plates *used for repair and maintenance of machinery which are used for ~~gr~~ manufacture of final products are eligible for Modvat credit. This Tribunal also held that* there *is no dispute that these items were used as raw materials of the capital goods and therefore* ~~*that*~~ there *is no reason for denial of the credit on the items. It is further* ~~*extent*~~ held *that during the period in dispute HR SS plates have been* used for fabrication of body of the storage tank of Ethyl Acetate in the chemical plant and as such they form part or component of the storage tank. It is further stated that the learned Commissioner have misdirected himself in observing that, items are used as

component of the storage tank, thus denying the credit. Actually the sheets form part of the body of the tank and as such are fully allowable under Rule 2(a)(A)(vii), wherein the storage tank have been specifically mentioned as capital goods. So far as A.C. Corrugated Sheet is concerned it is explained that these are used in the bagasse handling system of 170 Ton boiler, wherein the sheets are used to cover the rubber belt of bagasse handling system through which the bagasse is fed it in the furnace of the boiler. The work of these corrugated sheets in bagasse handling system is to save the bagasse from moisture and rain, because in case the bagasse becomes wet or moist, the it will not burn in the furnace of the boiler, resulting in none generation of steam which is essential to run the plant. AC sheets is also fitted with the bagasse handling system of the boiler to make a uniform feeding of bagasse in the furnace of the boiler and as such it is a component of bagasse handling system of the boiler. It is further explained that if there is no generation of steam for any reason like none feeding of bagasse in the boiler or if the bagasse fed is moist or wet, in such case there will be no generation of steam resulting into stoppage of the production of excisable goods. Accordingly it is stated that this forms component of the boiler system and is essential for manufacture of excisable products. It is further urged that the ld. Commissioner have erred in denying the credit observing that the same is used as roofing material to protect the capital goods which is neither covered under the definition of capital goods nor is used as an input of the final product. The ld. Counsel also relies on the ruling of

Honourable Supreme Court in the case of Union of India versus Hind Zinc Ltd. wherein the decision of the Honourable Rajasthan High Court was upheld where it was held that MS/SS plates are essential supplement to the plant and machinery for use~~d~~ in manufacture~~s~~ of goods, for its greater efficiency and better results and thus it is an integral part of process with which the primary machinery are engaged. Therefore there is no impediment for the goods in question qualifying as capital goods, eligible for Modvat credit. The ld. Counsel also relied on the ruling of the Apex Court in the case of CCE Vs. Rajasthan Spinning and Weaving Mills Ltd., wherein steel plates, MS channels etc. used in the fabrication of Chimney for diesel generating set was held to be capital goods as chimney being a pollution control equipment, was necessary for the diesel generating set which are essential for manufacture of excisable goods.

4. The learnedly for revenue relies on the impugned order.

5. Having considered the contentions I find that at HR SS plates have been used in the fabrication of storage tank of Ethyl Acetate. Further storage tank is a specified capital goods under Rule 2(a)(A)(vii) and as such the same is eligible for Cenvat credit. So far as AC corrugated sheet is concerned I find that the same have been used in the boiler, as discussed hereinabove, without the use of which there can be no generation of steam in the boiler which is essential for manufacture of excisable products.

Accordingly I hold that the Cenvat credit is allowable on the A.C. Corrugated Sheets in question. Accordingly I allow the appeal and set aside the impugned order to the extent denial of Cenvat credit was ordered on AC corrugated sheet and HR SS plates. The appellant will be entitled to Cenvat credit on the items in dispute. Penalty levied is also set aside.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
17.2.16
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