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: 01/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70997/2016-SM[BR] dated 26/09/2016

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/2619/2008	SIMBHAOLI SUGARS MILLS LTD., SIMBHAOLI, DISTT. GHAZIABAD (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To

3 Advocate(s) / Consultant(s):

Kamaljeet Singh
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

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

23-11-16
ISSUED ON

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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No. E/2619/2008-[SM]

Arising out of Order-in-Appeal No. 98-CE/MRT-II/2008 dated 28.08.2004 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Meerut-II.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

Simbhaoli Sugars Ltd. ...APPELLANT

VERSUS

C.C.E., Meerut-II ...RESPONDENT

APPEARANCE

Shri Kamal Jeet Singh, Advocate for the Appellant
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 12. 02. 2016

FINAL ORDER NO. 70997/2016

Per Mr. Anil Choudhary :

The issue in this appeal is whether the appellant manufacturer of sugar and molasses have rightly availed Cenvat credit of Rs.18,36,911/- during the period August, 2006 to December, 2006 on Plates/Coils/Shape and Section/M.S. Angles/M.S. Round and Flat/M.S. Channels falling under chapter 72 and 73 of the CETA, 1985 by treating these goods as inputs.

2. SCN dated 17/08/2007 was issued as it appeared to Revenue that the articles of iron and steel on which Cenvat credit have been taken were used by the appellant in construction of civil structure and hence not covered within the definition of input under Rule 2(k) of CCR, 2004, and therefore, Cenvat credit was not admissible. Accordingly, SCN proposed disallowance and recovery of Rs.18,36,911/- along with interest and further penalty was proposed.

3. The appellant contested the SCN by urging that the items in question have been used for making various equipments like Boiler, Vacuum Pan etc. Some items of also been used for making shades for machinery to avoid exposure of machines to rain, sun and weather and also ensure efficient working. Sugarcane carrier chain by which sugarcane is carried to mill house has to be protected. From some items of capital goods in the nature of staging/supporting structures are fabricated and also articles of iron and steel in the factory workshop for captive consumption. The various items of machinery and equipment in a sugar factory are installed at varying heights to avail the benefit of gravity for transferring the semi processed

material, which is in liquid form, through pipelines from one processing site to another. The structural staging was built to place the machinery and equipment at the required height and to make it possible for the workers to access the machines for operating them and for their maintenance and repair. For example centrifugal machine cannot be operated unless it is set at a proper height. The cane carrier used to carry sugarcane to the mill house cannot be used and operated unless it is set at a proper angle and height. The bagasse carrier which is used for carrying bagasse from the mill house to the boiler for being used as fuel in the boiler would be rendered useless if it is not set a proper height. Some articles of iron and steel are used for setting the sugar machinery at proper height and angle and to provide platform for operating the machinery for manufacture of excisable products being sugar and molasses. Further items are also used in repair and maintenance, as these items of iron are subject to wear & tear and corrosion. Pipelines fabricated from M.S. Plate also get worn out due to corrosive nature of sugarcane juice which is acidic in nature and requires periodical repairs and replacement. The parts of machinery being of iron also gets worn out due to friction and abrasion caused by motion and/or movement of materials, like bagasse etc.

4. The SCN was adjudicated vide Order-in-Original dated 21/04/2008 and the proposed demand confirmed along with interest and equal amount of penalty under Rule 15(1) of CCR for alleged contravention of Rule 2 & 3 of the said Rules. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who vide the impugned order have been pleased to dismissed the

appeal observing that no specific item of capital goods or parts and accessories appeared to be manufactured within the factory for use. It apparently appears that the items in question have been used in construction of godowns, sheds and for maintenance and repair of the plant.

5. Being aggrieved, the appellant-assessee is before this Tribunal. The learned counsel for the appellant urges that the issue is no longer *res-integra*. The Hon'ble Madras High Court in the case of India Cements Ltd. have held that an assessee is entitled to Cenvat credit on inputs being items of iron and steel utilised in fabrication of capital goods and repair thereof as well as in fabrication of support and staging structures without which no manufacture of excisable products can take place. The learned counsel have also relied on the orders decided in their favour by a coordinate bench of this Tribunal in final order No. A/51216/2015-SM dated 15/04/2015 wherein similar question of Cenvat credit on items of iron and steel used for repair and maintenance of capital goods in sugar factory was involved. This Tribunal allowing the appeal by way of remand held that if these items were used for the repair and maintenance of capital goods or in fabrication of the capital goods then the assessee is entitled to take Cenvat credit. But such fact is to be ascertained by the Adjudicating Authority on the basis of documents to be produced, and accordingly remanded the matter to the authority for allowing the same subject to verification.

6. The learned A.R. for Revenue relies on the impugned order.

7. Having considered the rival contentions, I hold that the appellant is entitled to Cenvat credit on the items of iron and steel in question if the same have been used for fabrication of capital goods, for repair and maintenance of capital goods, for fabrication of staging structures and supporting structures etc. as no excisable products can be manufactured without the same. Further, the amended definition of inputs under the Cenvat Credit Rules provides for availability of Cenvat credit to a manufacturer on all items utilised by the manufacturer in the factory of production. Accordingly, I allow this appeal by way of remand with a direction to the Adjudicating Authority to verify the claim of the appellant in the light of the directions and findings recorded hereinabove after verification of the utilisation of the items of iron and steel. Thus, this appeal is allowed by way of remand.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

patel/-

प्रमाणित प्रति / Certified True Copy
16.11
सहायक रजिस्ट्रार / A.R. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001