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: 05/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71100-71101/2016-EX[DB] dated 29/11/2016

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/49/2009	**MAWANA SUGAR WORKS,** MAWANA,DISTT. MEERUT (U.P.)
2	E/2637/2008	**MAWANA SUGAR WORKS,** Excise Chowk, University Road, Mangal Pandey Nagar, Meerut - 250005.
		Name and Address of Respondent
3		MAWANA SUGAR WORKS Distt- Meerut, Meerut(UP),, ,
4		-C.C.E. MEERUT I Excise Chowk, University Road, Mangal Pandey Nagar, Meerut - 250005.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,
COLVIN ROAD, LOHIA MARG
ALLAHABAD-211001

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 No.E/2637/08 & 49/2009-EX[DB]

(Arising out of Order-in-Original No. 26/Commissioner/Mrt-I/2008 dated 07/10/2008 passed by Commissioner of Central Excise & Customs, Meerut-I)

Commissioner of Central Excise, Meerut-I (in Appeal No. E/2637/08)

M/s Mawana Sugar works(in Appeal No. E/49/09) **Appellant**

Vs.

M/s Mawana Sugar works (in Appeal No. E/2637/08)

Commissioner of Central Excise, Meerut-I (in Appeal No. E/49/09)

Respondent

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) for Revenue
Shri Atul Gupta, Advocate for Assessee

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 29/11/2016
Date of Decision : 29/11/2016

Final ORDER NO....71100 - 71101 / 2016

Per: Dr. Satish Chandra

Both the cross appeals have been filed against the Common Order-in-Original No. 26/Commissioner/Mrt-I/2008 dated 07/10/2008. The period involved is 22.03.2006 to 31.03.2008.

2. The brief facts of the case are that the assessee is engaged in the manufacture of sugar. During the process of manufacturing of sugar, waste (Bagasse) is produced. The assessee has used the said Bagasse

waste for producing electricity which was captively use. The surplus electricity is sold outside. The appellant has availed the Cenvat credit of Central Excise Duty/Service Tax paid on inputs, capital goods and input services and could not maintained separate records for use thereof in dutiable products and none excisable products. So, the learned Commissioner passed the present impugned order confirming the demand against the assessee within the normal limitation period of one year and dropped the demand in respect of extended period. Being aggrieved, both the parties have filed the cross appeals.

3. With this background, we heard Shri Atul Gupta learned counsel for assessee and shri Pawan Kumar Singh learned A.R. for the revenue.

4. After hearing both the parties, it appears that the issue has come up before the Tribunal in the case of DSM Sugar Mills Ltd. Vs Commissioner of Central Excise reported at 2014 (304) E.L.T. 582 (Tri-Del.) wherein final order No. A/51042/2014-EX (DB) dated 24.02.2014 was passed. Further, Miscellaneous order No.MO/53732/2014-EX (DB) dated 17.10.2014 was also passed in the same Appeal. Through which Para 7 of Final Order No. A/51042/2014 was substituted by following para:

> *"The impugned order is, therefore, not sustainable. Though the matters were listed for hearing of the stay application only, since, the issue involved in this case stands decided in favour of the appellant by judgment of Hon'ble Allahabad High Court in the case of Gularia Chini Mills Gularia and others (judgment dated 13/08/13), there is no point in keeping the appeal pending. Accordingly, the impugned order is set aside and the appeal as well as stay application is allowed."*

The said order was assailed before the Hon'ble Supreme Court, who has dismissed the appeal filed by the Revenue [Commissioner. Vs DSM Sugar Mills Ltd.-2015 (324) E.L.T. A80 (S.C.)].

5. In the light of well settled legal position, the impugned order is likely to be set aside. Further, it may be mentioned that electricity is none excisable product so the Rule 6(3) of Cenvat Credit Rules, 2004 were not applicable in the instant case. Therefore, there shall be no demand against the appellant under said Rule-6 (3), hence, we set aside the impugned order.

6. In the result, the departmental appeal is dismissed and assessee's appeal is allowed, with consequential relief.

(Dictated in Court)

—Sd—
(Anil G. Shakkarwar)
Member (Technical)

—Sd—
(Justice Dr. Satish Chandra)
President

akp

प्रमाणित प्रति / Certified True Copy
9.12
सहायक पंजीकार / Asstt. 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