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: 05/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70745-70746/2016-EX[DB] dated 30/08/2016

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/2741/2007	**U.G.SUGAR & INDUS. LTD.** (DISTILLERY DIVISION) SEOHARA, DISTT. BIJNOR
2	E/2742/2007	**U.G.SUGAR & INDUS. LTD.** SEOHARA, DISTT. BIJNOR

		Name and Address of Respondent
3		-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

4Advocate(s) / Consultant(s):

KAMALJEET SINGH
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

5 Bar Association, CESTAT, Allahabad

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos. : E/2741 & 2742/2007-EX[DB]

Arising out of OIO No.1162/ST/AC/HPR/2010 dated 30.06.2010 passed by Asstt. Commr. (Appeals), Central Excise Division, Hapur.

For approval and signature:

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

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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

U.G. Sugar & Indus Ltd. ...APPELLANT(S)

VERSUS

C.C.E. Meerut-II RESPONDENT (S)

APPEARANCE

Shri Kamal Jeet Singh, Advocate for the appellants
Shri Sanjay Hasija (Supdt.) (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 30.08.2016

Final ORDER NO. 70745 and 70746/2016

Per Mr. Anil Choudhary :

The appellants are manufacturer of sugar and molasses is in appeal against common Order-in-Appeal dated 30/7/2007 passed by the Commissioner (Appeals), Central Excise, Meerut-II.

2. The brief facts in Appeal Number E/2741/2007 are that, a SCN dated 28th April, 2006 was issued alleging that during the month of April, 2005, appellant have availed credit of Rs.11,62,862/- including 50% inadmissible credit of previous year 2004-05 on items like channel, plates, copper/aluminum PVC cable, shape and section, gasket etc. as detailed in Annexure A to the SCN by treating this goods as capital goods. Accordingly, Revenue proposed to disallow the credit of Rs.11,62,862/- alongwith interest and further proposing penalty. The appellant contested the show cause notice by filing reply wherein they stated that under the policy of the Central Government it being obligatory for specified industries including sugar factories to install pollution control equipment, the goods in question were procured by them for manufacture and installation of biogas plant. The biogas plant was used for treatment of distillery effluents. The gas produced in the plant was used for manufacture of denatured ethyl alcohol which was excisable. Further, contending that under Rule 2(k) of CCR, 2004 pollution control equipment was specifically covered at Serial No. II of the definition of capital goods. And, further the definition of capital goods includes components spares and accessaries also of capital assets including pollution control equipment. The SCN was adjudicated

vide OIO dated 30/11/2006 and the proposed demand confirmed along with equal amount of penalty under Rule 15 of CCR observing that pollution control equipment, spares cannot be considered as equipment directly or integrally involved in the processing of any goods or manufacture of the final product and therefore are not eligible for credit. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals), who was pleased to reject the appeal confirming the demand.

3. Being aggrieved the appellant is before this Tribunal and urges that there is no finding by the authority below that the appellant have not fabricated or constructed the biogas plant. The disallowance is for a different reason being, the adjudicating authority not finding that pollution control equipment being not directly related to the manufacture of excisable goods. In view of the categorical entry in the definition of capital assets of pollution control equipment as capital goods, the Cenvat credit on the inputs so utilized, credit is available and accordingly prays for allowing the appeal.

4. Appeal number E/2742/2007, as per SCN dated 2/5/2006, it was alleged that on scrutiny of returns for the month of April, 2005 it appeared that appellant have taken credit of Rs.8,17,309/- on items being welding electrodes, plates, winding wire, MS wire, MS angle and jointing packing, as detailed ~~to~~ in this notice by treating them as capital goods. Accordingly the said amount was proposed to be disallowed along with interest and further penalty was proposed. The appellant contested the show cause notice stating that in the sugar factory items

of iron and steel were used for making shades of machinery to avoid exposure of machines to rain, sun and w~~h~~eather, for their efficient working. Besides various items of capital goods including staging/ supporting structures were fabricated out of these items alongwith other articles of iron in the factory workshop itself for captive consumption. The structure and staging had to be build to place the machinery and equipment at the required height and to make it possible for the workers to assess the machines for operating them and for their maintenance and repair. The CAF jointing sheet, asbestos packings were used as packing material at various stations of sugar mill plant in jointing various types of pipes to make them leak proof. Further welding electrodes were used for fabrication and installation of accessories and various parts of capital goods, repairing various machines and hard facing of various parts of machinery. Winding wire and MS wire were used for winding of electric motors installed at various production sites in the factory and specific components of electric motors. The shapes and sections of iron and steel were used for fabrication of structural in the factory for providing shade to the machinery and for making platforms for having ~~assessed~~ access to the machinery. Vide OIO dated 30/11/2006, the SCN was adjudicated and the proposed demand confirmed with equal amount of penalty along with interest observing that these items cannot be considered as capital goods. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order was pleased to allow the Cenvat credit with respect to winding wires and upheld the rejection of credit with respect to the specific items.

5. Learned counsel for the appellant urges that it is an admitted fact that all these items have been used in the factory premises either in repair and maintenance or in fabrication of the accessories etc. of the machinery for operating the same. Accordingly prays for allowing the credit on the items in question.

6. The learned A.R. for Revenue relies on the impugned orders. He further relies on the order of Hon'ble Allahabad High Court in case of the ***Dwarikesh Sugar Industries Ltd. vs. Commissioner of C.Ex., Meerut 2016(334) E.L.T. 58*** where welding electrodes were used for repairing and maintenance of plant and machinery during the period October, 2004 to August, 2005. It was held that welding electrodes are not covered under capital goods and hence credit is not admissible. Further, reliance is placed on the ruling of Allahabad High Court in case of ***Upper Ganges Sugar & Industries Ltd. vs. Commr. of Cus. & C. Excise 2015(324) E.L.T. 94***, wherein during the period August, 1999 to September, 1999 welding electrodes were used for welding of machines and machine parts. Welding electrodes were used to form layer over surface of mill rollers in order to harden them. It was held that electrodes do not constitute an integral part necessary to the constitution of whole articles and without which articles would not be complete. Accordingly, denial of credit was upheld.

7. Having considered the rival contentions, we find that there is no dispute of the appellant having ~~been~~ fabricated the biogas plant which is admittedly pollution control equipment. Further, the gas emerging

from the biogas plant is also utilized in manufacture of excisable goods. Accordingly, we hold that the appellant is eligible for Cenvat credit for the inputs utilized by them in the manufacture of biogas plant. Accordingly appeal number 2471/2007 is allowed with consequential benefits, if any.

8. In appeal number E/2742/2007, we hold that in view of the change in the provisions of Cenvat credit and now the credit being available on all the items utilized in the factory of production, we hold that the appellant is entitled to Cenvat credit on all the items in question including welding electrodes. We have been informed that the issue of Cenvat credit on welding electrodes utilized for the purpose of repair and maintenance is pending ~~concession~~ consideration before Hon'ble Apex Court, but no stay have been granted of the orders of the Tribunals and High Courts wherein credit have been allowed. As we have allowed credit on welding electrodes in several other appeals before this tribunal, for the sake of consistency we allow credit in this appeal also. This appeal is allowed with consequent benefits, if any, to the assessee.

(Pronounced & dictated in the open Court)

-Sd-	-Sd-
(ANIL G. SHAKKARWAR)	**(ANIL CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Patel/-

प्रमाणित प्रति / Certified True Copy
31/10/16 /SPS
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