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

Dated: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70762/2016-SM[BR] 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/2765/2007	**DEWAN SUGAR MILLS** AGWANPUR MORADABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3Advocate(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 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

Single Member Bench

E/2765/2007-EX(SM)

Date of Hearing/Decision: 30/8/2016

Dewan Sugar Mills **Appellant**

Vs.

C.C.E., Meerut-II **Respondent**

Appearance:

Present for the Appellant: Shri Kamal Jeet Singh, Advocate
Present for the Respondent: Shri Pawan Kumar Singh, (Superintendent) A.R.

Coram: Hon'ble Shri Anil Chaudhary, Member (Judicial)

Final Order No. 70762/2016

Per: Anil Choudhary

This appeal was finally decided by this Tribunal vide Final Order Number 50239 dated 22/01/2014 recording a finding that the demand was barred by limitation setting aside the impugned order and demand. Being aggrieved the revenue preferred appeal before honourable Allahabad High Court in CEA number 163 of 2014. Vide Final Order dated 03/09/2014 Hon'ble High Court remanded the matter back to this Tribunal by setting aside the final order with observations and directions of as follows: -

> "We are of the view that the Tribunal ought to have specifically dealt with the grounds which had weighed with the Adjudicating Authority and the Commissioner (Appeals) in applying the extended

period of limitation. Both the authorities have noted that the assessee had made suppression of fact in regard to the material which was used while filing declaration and availing Cenvat Credit. Without displacing this basic finding of fact, the Tribunal ought not to have, in our view, disturbed the order which was passed.

In this view of the matter, we consider it appropriate in the interest of fairness to restore the proceedings back to the Tribunal for fresh evaluation. In order to facilitate this exercise, we quash and set aside the impugned order dated 22 January, 2014 and restore the proceedings back to the Tribunal. We clarify that we have kept all the rights and contentions of the parties open on the applicability of the extended period of limitation. Similarly, if the Tribunal does come to the conclusion that the extended period of limitation was validly invoked, all the questions on merits are also kept open for adjudication before the Tribunal. In that view of the matter, it is not necessary to answer the question of law as formulated. "

2. Heard the parties.

3. Having considered the rival contentions I find that the admitted facts on record, as is evident on reading the show cause notice with the Order-in-Original, that show cause notice dated 15/03/2005 was issued for credit availed during the period 30/12/2001, 31/12/2002 on certain capital, goods and had also availed credit on welding electrodes

during the period March 2001 to December 2001. In the show cause notice it have been alleged that the appellant did not submit any return as required under the Central Excise Rules read with Cenvat Credit Rules 2001, showing the details of invoices against which the appellant availed Cenvat credit on capital goods and inputs. It is further alleged the appellant was asked to submit the said statements as provided under the said rules by the Superintendent vide letters dated 31st of October 2001 and reminder dated 24/12/2001 and 16/03/2002. But the appellant failed to submit the requisite statement. It therefore, appeared to revenue that the appellant intentionally avoided to file such a return to avail inadmissible Cenvat credit and utilise it for payment of Central Excise Duty towards the clearance of the final products. In reply to the show cause it was stated that the appellant started to set up the plant 1996 and intimation for taking credit was filed with the revenue. Upon commencement of production in March 2000 the appellant utilised the credit taken and also declared the same in the RT 12 returns, filed regularly alongwith extracts of RG 23 A part II. It was also contended that the extended period of limitation is not invocable as the appellant, as required under the provisions of Rule 57 G and T, filed the requisite returns in the prescribed format on 06/03/2000 to 8/6/2000 respectively. The said facts have been admitted in the Order-in-Original, with a further observation that it is found that the appellant had not mentioned structural material in any of the declarations filed. In the course of argument learned Counsel for the appellant have produced a copy of the returns filed which are duly acknowledged by the revenue. On a perusal of the returns I find that proper description of the inputs and capital goods along with the Tariff Heading have been given. Further the nature of input whether raw material, component, packing material, catalyst etc. have also been given. Simultaneously the utilisation of input for particular capital goods have also been specifically given. Having considered the rival contentions I find that no case of non-declaration or mis-declaration is made out on the part of the appellant. I further find that there is no specific allegation of the revenue as to what detail was lacking which the appellant did not furnish to the revenue. The findings of the lowers Courts holding suppression of facts in regard to material which was used, while filing declaration is perverse, as is evident from the facts on record. Under these facts and circumstances I hold that the appellant had made adequate declarations in the prescribed returns at the time of taking credit and accordingly the extended period of limitation is not invokable. In this view of the matter the demand in dispute being wholly attributable to the extended period is set aside. Accordingly the impugned order is set aside and the appeal is allowed. The appellant should be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in the open Court)

-Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy

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