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

Dated: 19/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70074/2016 EX dated 1/10/2015

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/327/2009	U.G.SUGAR & INDUS LTD (DISTILEERY DIVISION) SEOHARA, DISTT- BIJNOR
	Name and Address of Respondent	CCE, MEERUT II OPP SAHEED PARK, NEAR ASHOK KI LAT, DELHI ROAD, MEERUT

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH KAMALJEET SINGH,ADV
J-144, PATEL NAGAR-1
GHAZIABAD(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 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,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, <u>REGIONAL BENCH : ALLAHABAD</u>

<u>Ex. Appeal No.327/09</u>

Arising out of O/A No.123-CE/MRT-II/2008 dated 20.10.2008 passed by Commissioner of Central Excise(Appeals), Meerut II

For approval and signature:

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

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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? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s U.G.Sugar & Indus.Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut II

RESPONDENT (S)

APPEARANCE

Shri Kamaljeet Singh, Adv. for the Appellant (s)
Shri Dipak Kumar Deb, A.C. (A.R.) for the Department

CORAM:

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

<u>DATE OF HEARING & PRONOUNCEMENT : 01. 10. 2015</u>

Final ORDER NO. 70074/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The Appellant, M/s U.G.Sugar & Industries Ltd., is in Appeal against Order-in-Appeal No. 123-CE/MRT-II/2008 dated 20.10.2008 passed by Commissioner of Central Excise(Appeals), Meerut II.

2.1 Brief facts are that the Appellants are engaged in the manufacture of Industrial Spirit, Denatured Spirit and Absolute Alcohol and registered with the Central Excise Department.

2.2 A show-cause notice dated 01.05.2007, was issued stating therein that on the scrutiny of the records of the Appellant, it appears to Revenue that the Appellants have availed and utilized the cenvat credit for the period from April, 2006 to November, 2006 on Plates, Shape & Section, Bars, H.R.Sheets etc. as described in Annexure II of the Show-Cause Notice (SCN). By treating the same as capital goods, it appears to Revenue that as per definition of "Capital Goods" in Rule 2(a) (A) of Cenvat Credit Rules, 2004, the items on which the Appellants have taken credit, would not be admissible and it was proposed to disallow the cenvat credit taken of Rs.12,43,530/- and recover under Rule 14 of Cenvat Credit Rules, 2004 along with interest and penalty was also proposed under Rule 15 of Cenvat Credit Rules, 2004.

2.3 The Appellants contested by filing reply to the show-cause notice stating therein that the items in question have been used for making shades for machinery to avoid exposure of machines to rain, sun and weather for their efficient working, particularly, sugar cane carrier chain by which sugar cane was carried to Mill House has to be protected. Besides, some capital goods have been utilized in supporting structures along with fabrication of the plant and machinery. It was further pointed out that the sugar mill machinery is installed at various heights to avail the benefit of gravity for transferring the semi processed material, which is liquid, through pipe lines, from one processing site to another to ensure good quality of output and the structure has to be built to place the machineries and equipments at the required height and also to ensure help for supporting to workers to access the machineries at various point for operating them and also for repairs and maintenance from time to time. Accordingly, it was contended by the Appellants that all the equipments have been used in fabrication of components of the machineries and are fully covered under the definition of capital goods. It was further pointed out that in so far as the welding electrodes of iron and steels are concerned, they are used by the Appellant for repairing of capital goods and the same are fully qualified by the definition of "Inputs" under Rule 2 (a) read with 2(k) of Cenvat Credit Rules, 2004. However, the Adjudicating Authority confirmed the proposed demand observing that the goods in question cannot be considered as component, spare parts or accessories of capital goods. It was also found that the goods in question have been used in structural and construction, thus the inputs do not qualify. Further, interest is charged and penalty of Rs.12,43,530/- was also imposed under Rule 15 of Cenvat Credit Rules, 2004. Being aggrieved, the Appellant preferred an Appeal before the ld.Commissioner (Appeals), who has pleased to reject the Appeal upholding the findings of the Order-in-Original dt. 29.02.2008.

3. Heard the ld.Advocate for the Appellant and the ld.A.R. for the Revenue.

4. It is seen that the ld.Adjudicating Authority have failed to take notice of the exact usage of the inputs in question. I also find that the issue is coveredin the Appellant's own case in their Appeal for the earlier period in Ex.Appeal No.2709 of 2010 SM bearing Final Order No.1163-1164/2012 SMC dated 30.07.2012, wherein this Tribunal has observed that the lower authorities have no where discussed the use of said iron and steel articles and accordingly, remanded back to the original adjudicating authority for his re-consideration in accordance with law.

5. In so far as the issue of penalty is concerned, it was observed that since there has been no malafide attributable on the part of the Assessee, penalty is not attracted and the same was rightly set aside by the ld.Commissioner (Appeals).

6. Accordingly, I set aside the impunged order and remand the matter back to the adjudicating authority, who shall reconsider the issue considering the exact use of the inputs in question as required in the definition of capital goods under Rule 2 (a) (A) read with Rule 2 (k) of Cenvat Credit Rules, 2004. Penalty is set aside as the issue is interpretational in nature. The adjudicating authority shall pass a fresh order in accordance with law preferably within a period three months from the date of receipt of a copy of this order. The Appellant is also directed to appear before the adjudicating authority with all the

documents and supportings within forty five days from the date of receipt of a copy of this order.

7. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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