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: 18/10/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70964/2016-SM[BR] dated 07/10/2016

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/CROSS/195/2008	E/579/2008	CCE LUCKNOW 7-A, Ashok Marg, Lucknow.
			Name and Address of Respondent
2			NEOLI SUGAR FACTORY NEOLI,DISTT. ETAH. (U.P.),,

Copy To
3 Advocate(s) / Consultant(s): SH RAJ KUMAR,CA
U-18, PAWAN PLACE
SAMDA ROAD, ALIGARH

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

27/10/16

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

Cross Applicaion No.E/CROSS/195/2008
WITH
Appeal No.E/579/2008-[SM]

Arising out of Order-in-Appeal No.184-CE/2007 dated 19.11.2007 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

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? : 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

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C.C.E., Lucknow

...APPELLANT(S)

VERSUS

M/s Neoli Sugar Factory

...RESPONDENT (S)

APPEARANCE

Shri Pawan Kumar Singh, Supdt. (AR) for the Department (s)
Shri Raj Kumar (C.A.) for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 07.10.2016

FINAL ORDER NO.- 70964/2016

Per Mr. Anil Choudhary :

The Revenue is in appeal against Order-in-Appeal No.184-CE/2007 dated 19.11.2007, passed by Ld. Commissioner (Appeal), whereby Cenvat Credit have been allowed as rightly taken on the items like angles, Rods, Bars, Channels, M.S. Plates etc., falling under chapter 72 of CETA, which have been used in the manufacture of capital goods, being Vacuum Pan, New Boiler, Juice heater, Vacuum crystallizer, Syrup sulphit & Fuel carriers etc.

2. The facts in brief are that show-cause-notices were issued for the period February, 2002 and March, 2002, proposing to disallow total Cenvat Credit of Rs.6,19,391/-. As it appeared to revenue that the assessee have availed Cenvat Credit on the aforementioned items, falling under Chapter 72 of CETA and the said items are neither inputs for the final products, namely sugar and molasses neither are capital goods nor accessories, spare parts or components of capital goods under Rule 2 of Cenvat Credit Rules, 2002, as these items are not directly or indirectly involved in the production of final goods. The appellant had contested the SCN and the show cause notices were adjudicated vide O-I-O dated 22.05.2003, the proposed demand was confirmed along with penalty of equal amount. The Ld. Commissioner (Appeals) has remanded the matter vide Order-in-Appeal dated 07.12.2004, directing that adjudicating Authority to give opportunity of hearing and thereafter, the SCN, be decided on merits. The appellant had led detailed evidences, giving details of utilisation in the manufacture of capital goods as aforementioned, and also submitted the certificate of the chartered engineer who verified the fabrication of the said capital goods, certifying that the

assessee have used the inputs in question in manufacture of plant and machinery for manufacture of sugar and molasses in the manufacturing unit. The capital goods manufactured are classified, under Chapter Heading 8438 (vacuum Pan and crystallizer & juice heater) and the boiler are duly classified under heading 8402 of the CETA. The adjudicating Authority found vide O-I-O dated 17.12.2006 that the appellant after procuring the items such as angles, channels etc. have used in the manufacture of specified capital goods in their factory. The said capital goods so manufactured, are used in the manufacture of final products namely sugar and molasses. Further, referring to Rule 2(g) of CCR, 2002, wherein explanation 2 provides inputs include goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer. On such findings, the Assistant Commissioner was pleased to allow the Cenvat Credit, dropping the proposed demand as per the show cause notice. Being aggrieved, the Revenue preferred appeal before the Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) agreed with the findings of the Assistant Commissioner and further observed that unless there is dispute or doubt about the use of input/capital goods in the manner in which it has been claimed by the assessee, to have been used in the factory. There is generally no need to verify the use of input by the Assistant Commissioner. Further taken the notice, that the assessee had filed certificate of Chartered Engineer, indicating the manner in which these inputs have been used in the factory and accordingly, there was no reason for the Assistant Commissioner to discard and disbelieve the said certificate without any basis.

3. The Revenue is in appeal before this Tribunal on the ground that the Commissioner (Appeals) have erred in making the aforementioned observation and further there is failure on the part of Commissioner (Appeal) to take cognizance of the fact that the goods in question, were basically structural materials. Therefore, without physical verification of the actual use to which these items were put, the eligibility of Cenvat Credit could not be ascertained.

4. The Learned C.A. for the assessee relies on the impugned order and also states that they are filed cross objections in support of the impugned order. He further states that there have been no error in the findings of the courts below, there is no merits in the appeal. Further, he states that there was no such doubt raised in the show cause notice regarding the user of the inputs in question. The issue was wholly interpretational.

5. Having considered the rival contentions, I find that the ground of Revenue raising the doubt as to the utilisation of the inputs in question, amounts to travelling beyond the scope of show cause notice. From a plain reading of the issue raised by Revenue, it is evident that there was no dispute about the facts and the issue is wholly interpretational. Thus, I find no merits in the appeal of Revenue and the same is accordingly dismissed. The cross objection is also disposed off. The respondent-assessee will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

Certified True Copy

26/10/16

Asstt. Registrar
(C.E.S.T.A.T.)