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

Dated: 31/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70126/2016 SM dated 29/03/2016

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
	E/50320/2015	OUDH SUGAR MILLS LTD HARGAON, SITAPUR UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH RAJESH CHIBBER,ADV
FA-9, KAVI NAGAR
GHAZIABAD

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram 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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.50320/15

Arising out of OIA No.55-CE/LKO/2014 dated 03/07/2014 passed by the Commissioner (Appeals), Central Excise & Customs & 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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M/s Oudh Sugar Mills Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & Customs, Lucknow

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 29.03.2016

Final ORDER NO. 70126/2016

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant is manufacturer of sugar and molasses and denatured ethyl alcohol and is in appeal against order in appeal dated 3/7/14 passed by the Commissioner (Appeals), Lucknow, by which the disallowance of credit on welding electrodes used in repair and maintenance, have been upheld, although the penalty under Rule 15 of CCR have been deleted.

2. A show cause notice dated 7/4/12 was issued for the period October, 2011 to March 2012 for disallowing Cenvat credit of Rs.50,094/- on welding electrodes as it appeared to revenue that the same are in the nature of consumables used for repair and maintenance of already manufactured goods that is, existing plant and machinery. Further it appeared consumables like, lubricating oil, grease, cutting oils and coolant have specifically been included in the definition of input, which do not include welding electrodes under Rule 2 (k)(i) of the Cenvat Credit Rules, 2004. Further penalty was also proposed under Rule 15 of CCR. The appellant contested the show cause notice relying on the ruling of Honourable Chhattisgarh High Court in the case of Ambuja Cement Eastern Limited Vs. Commissioner : 2010 TIOL 309 H.C. Chhattisgarh-CX, wherein Cenvat credit on welding electrodes used in repairs is held admissible. Vide OIO dated 16/8/12, the proposed demand was confirmed along with interest and equal amount of penalty was imposed under Rule 15 one of CCR, 2004. Being aggrieved the appellant preferred appeal for the

Commissioner (appeals) who vide the impugned order was pleased to confirm the disallowance of Cenvat credit observing that this Tribunal in the case of Steel Authority of India Ltd. : 2008 (222) ELT 233 (Tribunal-Kol), have taken a contrary view and the same have been affirmed by the Honourable Supreme Court in 2008 (229) ELT A127 (S.C.). Further reliance was placed on the ruling of Honourable Andhra Pradesh High Court in the case of Sree Rayalaseema H-Strength Hypo Ltd. Vs. Commr. of Central Excise : 2012 (278) ELT 167. Being aggrieved the appellant is before this Tribunal.

3. The ld. Counsel for the appellant states that with effect from 1/4/11 the definition of input has been substituted vide notification number 3/11 – CE (NT) dated 1/3/11 and accordingly, "input" means – all goods used in the factory by the manufacturer of the final product. Accordingly as electrodes have been admittedly used by the appellant-manufacturer in the factory of production, the Cenvat credit is allowable. He further relies on the ruling of this Tribunal in the case of M/s Bajaj Hindustan Ltd. Vs. CCE, Lucknow : 2014 (313) ELT 563 (Tri.-Del.). Under similar facts and circumstances, this Tribunal distinguished the ruling of Honourable Andhra Pradesh High Court in the case of Sree Rayalaseema H-Strength Hypo Ltd. (supra) and relying on the ruling of Honourable Chhattisgarh High Court in Ambuja Cements (supra) and Union of India Vs. Hindustan Zinc Ltd : 2007 (214) ELT A-115 (SC) have allowed the Cenvat credit, observing that if a process or activity is so integrally related to the manufacture of goods sold, that without that process or activity, the manufacturer

may, even if theoratically possible, be commercially inexpedient, the goods intended in that process or activity would have treated as used in the manufacture. I further find that the ruling of under the High Court in case of find Sree Rayalaseema H-Strength Hypo Ltd. (supra) relates to the period prior to 1/4/11 and hence, in view of the substitution of the Rule, the same is not applicable in the facts of this case.

4. The ld.A.R. for revenue relies on the impugned order. He also relies on the following rulings :

(i) Upper Ganges Sugar & Industries Ltd. Vs. CCEx : 2015 (324) ELT 94 (All.) ;

(ii) SAIL Vs. CCE : 2008 (229) ELT A127 (SC) ;

(iii) Jaypee Rewa Plant Vs. Commissioner of Central Excise, Raipur : 2003 (159) ELT 553 (Tri.-LB) ;

(iv) Vikram Cement Vs. Commissioner of Central Excise, Indore : 2009 (242) ELT 545 (Tri.-Del.) ;

(v) Ramala Sahkari Chinni Mills Ltd. Vs. Commr. of Central Excise, Meerut I : 2010 (260) ELT 321 (S.C.).

5. Having considered the rival contentions, I find that the rulings relied upon by the Revenue relate to the period prior to 1/4/11. Further, the question before the Honourable Allahabad High Court in the case of Upper Ganges Sugar & Industries Ltd. (supra) was whether the welding electrodes can be treated as capital goods under Rule 57Q

of the erstwhile Central Excise Rules, 1944, which is not the issue in the present appeal. Accordingly, I hold that the appellant is entitled to take Cenvat credit on welding electrodes in view of the substituted definition of inputs with effect from 1/4/11. The appeal is allowed with consequential benefits. The impugned order is set aside.

5. Thus, the appeal is allowed. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

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प्रमाणित प्रति / Certified True Copy
6.4.16
सहायक रजिस्ट्रार / Asstt. Registrar