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

Dated: 22/04/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70144/2016 SM dated 8/4/2016

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/50411/2015 | SARJOO SAHKARI CHINNI MILLS LTD<br>BELRAYANA<br>LAKHIMPUR KHERI(UP) |
| | Name and Address of Respondent | COMMISSIONER OF CENTRAL EXCISE, LUCKNOW<br>7-A, ASHOK MARG, LUCKNOW |

Other Appellants and Respondents as per Annexure

**Copy To**

3 Advocate(s) / Consultant(s — SH VIKRANT KACKRIA,ADV
509, SECTOR-7
PANCHKULA, HARYANA.

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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**

**REGIONAL BENCH : ALLAHABAD**

**Single Member Bench**

**Appeal No. E/50411/2015(SMB)**

[Arising out of Order-in-Appeal No. 224/CE/LKO/2014 dated 03.11.2014 passed by Commissioner of Customs, Central Excise & Service Tax, (Appeals), Lucknow)

| | | |
|---|---|---|
| 1. | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | No |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 3. | Whether their Lordships wish to see the fair copy of the order? | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | Yes |

**M/s. Sarjoo Sahkari Chinni Mills Ltd.** **Appellant**

**Vs.**

**Commissioner of Central Excise, Lucknow** **Respondent**

**Appearance:**

Shri Jatin Mahajan (Advocate) for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR) for Respondent

**Coram:**

**Hon'ble Shri Anil Choudhary, Member(Judicial)**

Date of Hearing : 08/04/2016

Date of Decision : 08/04/2016

Final Order No. 70144/2016

**Per: Anil Choudhary:**

1. The issue in this Appeal is whether the input duties on M.S. Plates, M.S. Angles, Joist, falling under chapter 72 of CET Act, used in repair and maintenance of existing plant and machinery or for modification and expansion of existing plant, are eligible for Cenvat Credit.
2. Heard the parties.
3. I find that same issue in appellant's own case have been decided in its favour by co-ordinate bench of the Tribunal in Appeal No. E/1437/2011-SMB reported at 2014 (301) ELT 387 (Tri-Del). The relevant Paras are reproduced for reference-

"2.1 *Learned Counsel for the appellant, pleaded that as mentioned in the show cause notice itself, the items, in question, have been used for repair and maintenance of the plants and machinery or modification of the existing plant and machinery, that in the reply dated 7-3-2010 to the show cause notice, it has been confirmed by the appellant that these items had been used for repair and maintenance, that the issue of eligibility of these items for Cenvat credit stands decided in favour of the appellant by the judgment of UOI v.Hindustan Zinc Ltd. Reported in 2007 (214) E.L.T. 510 (Raj.), the Government's SLP against which it was dismissed by the Hon'ble Supreme Court vide judgment reported in 2007 (214) E.L.T. A115 (S.C.) and also by the judgment of Hon'ble Karnataka High Court in the case of CCE, Bangalore-I v. Alfred Herbert (India) Ltd. Reported in 2010 (257) E.L.T. 29 (Kar.), that in view of these two High Courts, the impugned order is not correct, and same is required to be set aside.*

*2.2 Learned AR, opposed the prayer by reiterating the findings of Commissioner (Appeals) in the impugned order and pleaded that as observed by the Commissioner (Appeals) in the impugned orders, these items have been mainly used for fabrication of structures fixed to earth and, hence, same would not be eligible for Cenvat Credit in view of Tribunal (Larger Bench)'s judgment in the case of Vandana Global Ltd. V. CCE, Raipur reported in 2010 (253) E.L.T. 440 (Tri-LB) and that the Apex Court also in the case of saraswati Sugar Mills V. CCE, Delhi-III reported in 2011 (270) E.L.T. 465 (SC) has held that the steel structures for supporting the machinery in a plant are not capital goods within the meaning of this term as defined in Rule 57Q of Central Excise Rules, 1944 (para 19 of the judgment). He, therefore, pleaded for rejection of appeal.*

*3.1. I have carefully considered the submissions from both sides and perused the records.*

*4.1. I find that while the Commissioner (Appeals) in the impugned order-in-Appeal has observed that the items, in question – MS Plates, MS Sheets,* *etc, were used in the factory for construction of supporting structure for machinery and foundation, in the show cause notice it has been alleged that the items in question, were used by the appellant for repair and maintenance of the existing plant and machinery or for modification of the existing plant and machinery. Thus, the allegation that the items, in question, were used in the foundation of capital goods or for fabricating supporting structures for capital goods was not there in the show cause notice itself and, hence, the same cannot be raised at the appellant stage. As regards, the question as to whether the steel plates used for repair and maintenance for plants and machinery are eligible for Cenvat credit or not there are judgments of two High Courts- Hon'ble Rajasthan High Court in the case of UOI v. Hindustan Zinc Ltd. (supra) and Hon'ble Karnataka High Court in the case of CCE, Bangalore-I v. Alfred Herbert (India) Ltd. (supra). By following the said decisions, I set aside the impugned orders and allow the appeal with consequential relief."*

4. That it further appears, the afore mentioned order have been accepted and no further appeal is filed by Revenue.

5. That, accordingly this appeal is allowed with consequential benefits, and the impugned order is set-aside.

(Dictated and pronounced in the open Court)

Sd/-
**(Anil Choudhary)**
**MEMBER (Judicial)**

(Akp/)

प्रमाणित प्रति / Certified True Copy
24.5.16
सहायक पंजीयक / 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