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

Dated: 13/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70169/2016 SM** dated 05/05/2016

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/50590/2013	JAIN DISTILLERY NAGINA ROAD BIJNORE, UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH L.P.ASTHANA,ADV
R-163, GREATER KAILASH-I
NEW DELHI

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 Hil,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File 17.M.S KNOWLEDGE PROCESSING PVT LTD(TAMMANAGEMENTINDIDA.COM)

Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal No.50590/15

Arising out of OIA No.90-CE/MRT I/2014 dated 30/10/2014 passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Meerut I.

For approval and signature:

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

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

M/s Jain Distillery ...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Meerut I RESPONDENT (S)

APPEARANCE

None 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 : 03.05.2016

Final ORDER NO. 70169/2016

Per Mr. Anil Choudhary :

The issue in this appeal is whether the appellant, being a manufacturer of rectified spirit, special denatured spirit et cetera, is entitled to Cenvat credit on items like, diluted tanks vessels, joist, channels, sieve bed and support ball acquired during the month of January 2008, relating to financial year 2007-08.

2. In the course of audit during February,2011 for the period January,2008 to March,2010, an objection was raised on the appellant having taken Cenvat credit amounting to Rs.4,17,440/- on capital goods, namely joist, channels etc. as the same are classifiable under chapter 72 of CETA and it appeared to Revenue that the same are not covered under the definition of capital goods. The appellant on being so advised by Revenue- Audit, reversed the amount of Rs.4,17,440/- on 25/2/11. Thereafter, the Range Officers vide letter dated 23/6/11 directed to deposit interest on the amount reversed at the time of audit, and get the deposit/particulars of the amount reversed, verified from the original records. The appellant contested and submitted that they have wrongly been directed by the Audit to reverse the credit and that they are not required to deposit the interest and hence, there is no question of paying interest rather they sought permission to re-credit the amount reversed.

3. SCN dated 31/1/13 was issued as it appeared to Revenue that they had taken credit wrongly and have also suppressed the facts from the Revenue and accordingly, is liable to reverse the Cenvat credit amounting to Rs.4,53,441/- and further proposal to appropriate

amount of Rs.4,17,440/- reversed earlier and further proposal for levy of interest and penalty under Rule 15 (2) of Cenvat Credit Rules, 2004.

4. The appellant contested the show cause notice stating that the diluter tanks purchased vide Invoice No.137 dated 14/07/07 is covered under the definition of "capital goods" under Rule 2 (a)(A)(vii) of CCR as the "storage tank" have been specifically mentioned under sub-clause (vii) of CCR. So far the channel, joist are concerned purchased vide Invoice No.1519 dated 23/7/07 and Invoice No.1612 dated 27/07/07, have been used in fabrication of Bio-Gas Digester (Effluent Treatment Plant Equipment) which is statutory requirement under U. P. Pollution Control Board, Lucknow. So far the sieve bed and support ball purchased vide Invoice No.32 dated 24/1/08, have been used in fabrication of R.O.Plant where spent-wash is passed through bio-membrance process with the help of Bio-Gas digester and Methane (Bio-gas) is used as fuel in the Boiler. This is a statutory requirement of the U.P.Pollution Control Board. In support of this contention, a letter No.F23613 dated 17/10/07 of the U.P.Pollution Control Board was enclosed. Further, reliance was placed on the ruling of Honourable Supreme Court in the case of CCE, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd. : 2010 (255) ELT 481 (SC). Further, in support, a certificate of chartered engineer was also filed certifying the use of the items in the fabrication of eligible capital assets. It was also contended that the show cause notice is time barred as the credit was taken in January, 2008 and the same was disclosed in the ER I Returns and further, the transaction was duly recorded in the books of

accounts and the issue is only interpretational and there is no suppression or contumacious conduct on the part of the appellant. Vide OIO dated 31/1/2014, the Deputy Commissioner was pleased to confirm the proposed demand appropriating the amount already reversed and further imposed penalty of Rs.4,53,441/- under Rule 15 (2) of CCR, 2004 read with Section 11AC of the Central Excise Act, 1944. He further observed that the appellant had only taken the Cenvat credit on items being joist and channel et cetera classified under chapter 72 of CETA which are not covered under the definition of "capital goods". So far the claim on storage tank and the claim regarding use in fabrication of biogas digesters (Effluent Treatment Plant Equipment) and use of sieve bed and support ball in fabrication of R.O. plant, where spent wash was passed through Bio Membrance Process with the help of biogas digester and methane (Bio-Gas) produced was used as fuel in the boiler which was a statutory requirement of U. P. Pollution Control Board. It was held that these items do not fall in chapter/headings/sub-headings in the list at Rule 2(a)(A)(i) of CCR, 2004 nor do these fall in the category of goods listed at Rule 2(a)(A)(ii)(iv)(v)(vi) & (vii) and therefore, these goods would not qualify as capital goods unless these are components, spares or accessories of capital goods. It was further observed that the appellants have not produced sufficient evidences in this regard and the appellants have not provided the specific uses of the said itmes under dispute, so as to qualify as capital goods or as input used for fabrication of capital assets. It has also been observed that even a cursory examination of the said items in question indicates that these items are not inputs going into the manufacture of sugar.

5. So far the alternative arguments made by the ld.Counsel for the appellant, are concerned that the items have been used in the fabrication of capital goods which have been further used for production of taxable output, It was rejected by adjudicating authority observing that it has not been mentioned that for which capital goods, these items have been used and what was the classification of the goods fabricated from these items, accordingly held that the appellant have failed to discharge the onus.

6. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals) who has been pleased to dismiss the appeal relying on the finding of the Deputy Commissioner. Being aggrieved, the appellants have preferred appeal before this Tribunal.

7. The appellant is absent in spite of notice. Further it appeared that they had sought request for adjournment on earlier date 21/4/16. As the facts of this appeal lie in a very narrow compass, the appeal was taken up with the assistance of ld.A.R. for the Revenue, who have been heard and the appeal records were perused.

8. Having considered the rival contentions, it appears that the appellant have relied on the evidences in the shape of invoices for the items purchased, certificate of Chartered ~~Accountant~~ Engineer in support of the use of the items in fabrication of capital assets and have also produced a letter of U. P.Pollution Control Board, imposing the condition for

establishing the biogas-digester (Effluent Treatment Plant Equipment) and use of sieve bed and support ball in fabrication of R.O. plant where spent wash was passed through Bio Membrance Process with the help of biogas digester and methane (Bio-Gas) produced was used as fuel in the boiler. It further appears that the Courts below have rejected the contentions of the appellant in summary manner without calling for any further evidence and/or explanation. It further appears that the contentions of the appellant have not been found wrong but have been rejected for the want of sufficient evidence. Thus, both the order in original and the order in appeal are non-speaking and cryptic. It is further seen that the ld. Commissioner (Appeals) have observed in para-5.8 of his order that in view of the ruling of the Larger Bench of this Tribunal in the case of Vandana Global Ltd. Vs. CCE, Raipur : 2010 (253) ELT 440 (Tri.LB) which were pronounced in the year, 2010, penalty is not warranted in view of divergent decisions prevailing on the issue during the relevant time. I agree with the finding of the ld. Commissioner (Appeals) on the issue of penalty and confirm the order to the extent penalty imposed is set aside. The impugned order is set aside and the matter is remanded to the adjudicating authority to call for further evidence if any, required for and pass a reasoned order. The appellant is also directed to appear before the authority within a period of 60 days from receipt of a copy of this order and seek an opportunity of hearing along with representation and evidences they want to rely. All issues are kept open.

9. Thus, the appeal is allowed by way of remand on all issues except penalty.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
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