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: 28/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70713/2016-SM[BR] dated 18/08/2016

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/50666/2015	**ROSA SUGAR WORKS** ROSA SHAHJAHANPUR UP,242406
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

Bipin Garg
B-1/1289, A - Vasant Kunj,
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 Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD
Court No. 2

Appeal No. : E/50666/2015- EX [SM]

Arising out of O/A No. 237-CEx/APPL-LKO/LKO/2014 dated 20.11.2014 passed by Commr. (Appeals) of Customs, Central Excise, & Service Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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 Rosa Sugar Works ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Lucknow. ...RESPONDENT(S)

APPEARANCE:

Shri Ms. Stuti Saggi, Advocate for the Appellant(s)
Shri D.K. Deb, Assistant Commissioner (AR) for the Department

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 18.08.2016

FINAL ORDER NO. 70713/2016

Per Mr. Anil G. Shakkarwar :

The brief facts of the case are that the appellant was supplying Bio-manure and Cane-seed meant for distribution amongst Cane Growers and Service tax paid on the transportation of Bio-manure and Cane-seed, transported to the Cane Growers was availed as Cenvat credit on account of input service of GTA being the manufacturers of Sugar. It appeared to Revenue that the said service is not eligible to be called input service and such Cenvat credit was not admissible. Therefore, the appellant was issued with two Show Cause Notices one dated 27-08-2012 and another dated 15-02-2013 during a period from August, 2011 to November, 2012 demanding alleged ineligible Cenvat credit of Rs17,633/- under Rule 14 of Cenvat Credit Rules, 2004. Both the Show Cause Notices were adjudicated through Order-in-Original No. 02/SPN/DEM/2013 dated 30-10-2013 wherein the Adjudicating Authority has held that the service involved in the dispute is not input service for the manufacture of Sugar and Molasses. Therefore, the Original Authority has denied the said Cenvat credit and imposed equal penalty. Aggrieved by the said Order-in-Original dated 30-10-2013, appellant preferred appeal before Commissioner (Appeals), Lucknow. The ld. Commissioner (Appeals) through Order-in-Appeal No. 237-CEx/APPL-LKO/LKO/2014 dated 20-11-2014 agreed with the findings of the Original Authority and dismiss the appeal.

2. Aggrieved by the said Order-in-Appeal dated 20-11-2014, the appellant is before this Tribunal. The grounds of appeal inter-alia include

that supply of Bio-manure and Cane-seed is covered under procurement of input but it is part of the inclusive clause of definition. They further relied on various case laws.

3. The ld. Counsel for the appellant has reiterated the grounds of appeal and submitted a copy of this Tribunal Final Order in the case of "Mawana Sugars Ltd. Vs. Commissioner of Central Excise & Service Tax, LTU, Delhi reported at 2015 (38) S.T.R. 424 (Tri. – Delhi)" and argued that the activities of Sugarcane area survey and Sugarcane Development was held to be having the nexus with the business of manufactures of sugar and Service tax paid in respect of same was allowed as admissible Cenvat credit. She has further submitted a copy of case law in the case of "Commissioner of Customs & Central Excise, Hyderabad Vs. ITC Limited reported at 2013 (32) S.T.R. 288 (A.P.)" and argued that the plantation activity was held to be having nexus with the manufacturing activity of respondent ~~had~~ in the said case law as ruled by Hon'ble High Court of Andhra Pradesh at Hyderabad.

4. The ld. Department Representative has argued that there is no direct or indirect relationship between the activity of supply of Bio-manure and Cane-seed with that of manufacturer of sugar and therefore input service credit is not admissible.

5. I have taken into consideration the rival contentions, I find that the Service tax paid on the transportation of Bio-manure and Cane-seed shall become input service to the farmers and not to the manufacturer. The case laws relied upon by the ld. Counsel are related to the input services utilized by

the manufacturers whereas in the present case the services are utilized by the farmers and not by the manufacturer/appellant. Therefore, I hold that Cenvat credit disputed in the matter before me, is not admissible to the appellant. I therefore dismiss the appeal.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
23.9
सहायक पंजीकार / 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