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: 09/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70750/2017-SM[BR] dated 14/07/2017

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/875/2011	**J.B. DARUKA PAPER LTD.,** A-1, INDUSTRIAL AREA, ADVENIA GRANT, SHAJAHANPUR ROAD, SITAPUR (U.P.)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

3Advocate(s) / Consultant(s)

Mrs. Stuti Saggi (Adv.)(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

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

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

APPEAL No. E/875/2011-EX[SM]

(Arising out of Order-in-Appeal No. 418-CE/LKO/2010 dated 29/11/2010 passed by Commissioner of Central Excise & Service Tax (Appeals), Lucknow)

M/s J. B. Daruka Paper Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Mrs. Stuti Saggi, Advocate. for Appellant
Shri Mohd. Altaf, Assistant Additional Commissioner (AR).for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 11/07/2017

FINAL ORDER NO. 70750/2017

Per: Anil G. Shakkarwar

The present appeal filed by appellant M/s J. B. Daruka Paper Ltd. against of Order-in-Appeal No. 418-CE/LKO/2010 dated 29/11/2010 passed by Commissioner of Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellants were engaged in manufacture of Kraft Paper falling under Chapter 48 of first schedule to Central Excise Tariff Act, 1985. They were also availing Cenvat credit facility. During the course of checking of invoice of capital goods Central Excise Officers

found that the appellant had taken Cenvat credit of Rs.3,19,969/- i.e. 50% of Cenvat credit of Rs.6,39,938/- in the Financial Year 2008-09 on HSD Bars, TMT Bars & MS Bars under capital goods. Central Excise Officers conducted investigation and recorded statement dated 29/12/2008 of Shri Manish Jain, Authorized Signatory who stated that the said HSD Bars, TMT Bars & MS Bars were used for making civil foundation to erect the other capital goods. Further, it appeared to Revenue that the said Cenvat credit of Rs.6,39,938/- was not admissible. Therefore, the appellants were issued with a Show Cause Notice dated 21/08/2009 with a proposal to disallow the said Cenvat credit. The appellants submitted that their reply through letter dated 18/01/2010 to the said Show Cause Notice wherein they have submitted that some quantity of the said bars were used in erection and installation of chemical recovery plant for the purpose of pollution control as pollution control equipment and some of the said bars were used in erection of supporting structure of various machinery during capacity expansion of their paper mill plant. The Original Authority did not appreciate the submissions and confirmed the demand and imposed equal penalty through Order-in-Original dated 29/10/2010. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through Order-in-Appeal dated 29/11/2010. The ld. Commissioner (Appeals) relied on decision of Larger Bench of this Tribunal in the case of Vandana Global Limited *Versus* Commissioner of Central Excise, Raipur reported at 2010 (253) E.L.T. 440 (Tri. – LB) and rejected the appeal filed by the appellant. However, the ld. Commissioner (Appeals) reduced the penalty to Rs.35,000/- under Rule 15(1) of Cenvat Credit Rules, 2004. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant. The ld. Counsel for the appellant has submitted that part of the bars were used for making pollution control equipments and pollution control equipments were qualified to be treated as capital goods. Therefore, so far as the said bars ~~were~~ used for making pollution control equipments are concerned Cenvat credit in respect of the same is admissible. She has further submitted that remaining part of the bars ~~which~~ were used for making civil foundation to erect the other capital goods. She has relied on ruling by Hon'ble High Court of Madras in the case of Commissioner of Central Excise, Tiruchirapalli *Versus* India Cements Ltd. reported at 2012 (285) E.L.T. 341 (Madras) wherein it has been held that CTD Bars, TOR Steel & Cement if used for civil construction which are absolutely necessary for establishing a manufacturing unit for creating foundation for support to the supporting structures is admissible for Cenvat credit. Revenue relied on ruling by Hon'ble High Court of Allahabad in the case of Daya Sugar *Versus* Commissioner of Central Excise, Meerut-I reported at 2015 (316) E.L.T. 394

(Allahabad). In reply to the submissions of Revenue, she has submitted a copy of the Final Order passed by this Tribunal in the case of M/s Singhal Enterprises Pvt. Ltd. *Versus* Commissioner of Customs & Central Excise, Raipur reported at 2016-TIOL-2451-CESTAT-DEL and submitted that Hon'ble Justice Dr. Satish Chandra, who was member of the Allahabad High Court Bench which passed ruling in the said case of Daya Sugar (supra) was the member of the Bench as President by the Bench which passed the Final Order in the said case M/s Singhal Enterprises Pvt. Ltd. (supra) and for passing the said Final Order one of the case law cited before them was said case law in the case of Daya Sugar (supra) and the said Bench of this Tribunal in the case of M/s Singhal Enterprises Pvt. Ltd. (supra) has held that applying the user test, structural items used in the fabrication of support structures could fall within the ambit of the capital goods.

4. Heard the ld. A. R. for Revenue, who has relied on ruling by Hon'ble High Court of Allahabad in the case of Daya Sugar *Versus* Commissioner of Central Excise, Meerut-I reported at 2015 (316) E.L.T. 394 (Allahabad) wherein it has been held as follows:- "These items are appropriately classifiable either under Chapter 72 as checkered plates, sections, etc. or under Chapter 73 as staging material, if subjected to various processes, which go to the erection of shed and erected structures. The appellant admits that these plates, sheets, sections, etc. were used in the factory for the

purpose of constructing platform for use of the running of machinery. By no stretch of imagination these items could be considered as sugar mill machinery. He has further contended that the goods in question were used only for the purpose of raising civil structures, and consequently, cannot be termed as capital goods."

5. Having considered the rival contentions and on perusal of the facts on record, I find that the contention of the appellant is sustainable which relates to that part of the said bars which were used in making pollution control equipments as admissible for availment of Cenvat credit. In so far as the part of the bars which have gone into making of civil foundation, I find that the said issued is covered by the ruling of Hon'ble High Court of Madras in the case of Commissioner of Central Excise, Tiruchirapalli *Versus* India Cements Ltd. (supra) wherein Hon'ble High Court of Madras as held in Para 7 of the said ruling as follows:- "As far as the other items, namely, Rebar Coils, CTD Bars, TOR Steel and Cement are concerned, as to whether they are capital goods or not, the Tribunal having regard to the law laid down by the Apex Court in Jawahar Mills's case, has liberally construed the above rule and factually found that these are the items which are used for the purpose of construction of the plant comprising of concrete foundations, concrete silos for storing raw materials, clinker and cement, pre-heater tower structure, load centres etc. Having regard to the above factual

findings, the Tribunal had found that these items are not used for civil construction, but for the construction, which are absolutely necessary for establishing a manufacturing unit for cement." Further the Hon'ble High Court of Madras has held that the said finding of the Tribunal did not require any interference. Relying on the same findings of Hon'ble High Court of Madras which are squarely applicable in the present case. I hold that Cenvat credit on that part of the HSD Bars, TMT Bars & MS Bars is also admissible which have gone into making of civil foundation to erect capital goods in the present case. I, therefore, allow the present appeal by setting aside both impugned Order-in-Original & Order-in-Appeal. The appellant shall be entitled for consequential relief, if any, as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy
21/08/17
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