FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 07/11/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71307/2017-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/1397/2009 | **The Oudh Sugar Mills Ltd**<br>Hargaon<br>SITAPUR<br>U.P. |
| | | Name and Address of Respondent |
| 2 | | C.C.E. & S.T.-Lucknow<br>7-A...ASHOK MARG,<br>LUCKNOW,<br>UTTAR PRADESH-226001 |

Copy To

3 Advocate(s) / Consultant(s):

**BIPIN GARG & CO.**
**ADVOCATES(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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/1397/2009-EX[SM]

(Arising out of Order-in-Appeal No. 74-CE/LKO/2009 dated 19/03/2009 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Lucknow)

**The Oudh Sugar Mills Ltd.** **Appellant**

Vs.

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

Appearance:

Shri Bipin Garg (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi AC (DR) for Respondent

**CORAM:**

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**

| | | |
|---|---|---|
| Date of Hearing | : | 14/07/2017 |
| Date of Decision | : | 14/07/2017 |

FINAL ORDER NO-71307/2017..........

**Per: Anil Choudhary**

This appeal was earlier disposed of vide Final Order dated 28 July, 2011, ex parte. Thereafter, the Misc. Application for recall of the ex-parte order was also dismissed vide order dated 12 November, 2013. The appeal preferred by the appellant before the Hon'ble Allahabad High Court, being CEA No. 10 of 2004 by order dated 16 February, 2017 the Hon'ble High Court have been pleased to set aside the final order of this Tribunal dated 28th July, 2011 with direction to decide the appeal afresh on merits after hearing both the parties.

2. The issue in this appeal relates to allowability of Cenvat credit taken on items like welding electrodes, SS Coil, MS Angles, MS Channels and Joists. The appellant is a sugar mill engaged in the manufacture of sugar and molasses from sugar cane. They have taken Cenvat Credit during the period April, 2003 to June 2003. Vide show cause notice dated 26 April, 2004 objection was raised as regards allowability of credit on the aforementioned items. Vide order in adjudication dated 22 October, 2008, out of the proposed disallowance of Cenvat Credit Rs. 4,02,790/-, disallowance was upheld for Rs. 2,92,317/-, whereas credit amounting to Rs. 1,10,453/- was held allowable; Being on items like Bush for Bagasse Carrier Chain, Bagasse Carrier Chain, MS Chain and Pin for Chain and Engineering group. Being aggrieved appellant preferred appeal before learned Commissioner (Appeals) who was pleased to reject the appeal upholding the Order-in-Original and also upholding the penalty imposed for Rs. 2,92,317/- under Rule 13 of CCR, 2002.

3. Being aggrieved the appellant-assessee is before this Tribunal.

4. Heard the parties.

5. So far the first issue is concerned regarding allowability on welding electrodes, it have been urged by the learned counsel for the appellant that the welding electrodes on which

credit have been taken by way of inputs have been used in the factory of production, both for installation of new machinery or part thereof as well as for repair and maintenance of existing plant and machinery. The learned counsel further states that although without repair and maintenance of the existing plant and machinery, production may be theoretically possible but in practical, production cannot be effected of the taxable or dutiable goods without repairs to plant and machinery, and also without repairs and replacement or erection of new machinery, time to time. The learned counsel further relied on the ruling of Division Bench of this Tribunal in the case of Singhal Enterprises Private Ltd. v/s Commissioner Customs & Central Excise reported at 2016-TIOL-2451-CESTAT-Delhi, this Tribunal held that credit of duty paid on welding electrodes as allowable, following the ruling of Chhattisgarh High Court in Ambuja Cements Eastern Ltd reported at 2010-TIOL-309-HC-Chhattisgarh–CX and also the ruling of Hon'ble Rajasthan High Court in Hindustan Zinc Ltd reported at 2008-TIOL-408-HC-Raj-CX. Accordingly, following the precedent ruling, I hold Cenvat Ccredit on welding electrodes is allowable.

6. The next item is regarding SS coil. It is stated that this has been used in Juice Sulphiter and raw juice through lining, in the factory of production. As they do not qualify under definition of capital goods, the same are covered under the definition of input and credit taken accordingly. It is

further urged that there is no dispute that these items have been used in the factory of production for manufacture of taxable/dutiable goods. The other items in dispute are MS Angles and MS Channels. It has been explained that MS Angles are used in enhancing the capacity and modification of dryer house equipment, namely sugar beater, hopper, etc. These angles have also been used for staging and supporting structures of equipments, but not used as civil work. Accordingly, these angles, etc., qualify as capital goods for Cenvat Credit. Further MS channel have been used in expansion and modification of dryer house equipments, namely sugar beater and hopper etc. to give support and strengthening the same. Admittedly, these goods have not been used as civil construction item. Thus, these angles and channels quality as for Cenvat Credit as inputs. I find that allowability of inputs for supporting structures and foundation etc. have been held to be allowable by Hon'ble Madras High Court in the case of India Cement Ltd reported at 2014 310 ELT 636. Accordingly, I hold that Cenvat Credit is available on MS angles/channel, etc.

7. The next item of dispute is regarding Joist. It is stated that Joist have been used in staging of Juice Sulphiter, Juice weighing scale and sugar beater. Joist have been used as supporting structure of equipment in the factory of production but, not used in civil work, admittedly. I hold that joist also qualifies for Cenvat Credit following the ruling of

India Cement Ltd (supra). Further, another ruling in the case of India Cement Ltd. reported ate 2015 (321) ELT 209 the Hon'ble Madras High Court have held that Cenvat Credit on MS rods/sheet, MS Channels, etc. used for erection of capital goods that is fabrication of structurals to support various machines like crusher, kiln, hoppers etc. is available as without such structure, machinery could not be erected and would not function, which is not disputed. Accordingly, the Cenvat Credit on the items in question was available.

8. To sum up the appeal is allowed and the impugned order is set aside to the extent, it has disallowed the Cenvat Credit amounting to Rs. 2,92,317/-. Penalty retained by learned Commissioner also stands set aside. The appellant shall be entitled for the consequential benefits in accordance with law.

(Dictated and pronounced in Court).

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

*Ankit*

प्रमाणित प्रति/Certified True Copy
28/11/17
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
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