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: 27/09/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71144/2017-EX[DB] dated 07/09/2017

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/1566/2010	CCE ,MEERUT II OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
		Name and Address of Respondent
2		DSM SUGAR ASMOLI Tehsil-Sambhal, Distt. Moradabad (UP),,

Copy To
3Advocate(s) / Consultant(s):

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

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. I

APPEAL No: E/1566/2010-EX[DB]

(Arising out of Order-in-Appeal No. 90-CE/MRT-II/2010 dated 26/02/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Commissioner of Central Excise, Meerut-II **Appellant**

Vs.

M/s DSM Sugar, Asmoli **Respondent**

<u>Appearance:</u>

Shri Sandeep Kumar Singh (Dy. Commr) AR for Appellant
Shri Aalok Arora (Advocate) for Respondent

<u>**CORAM:**</u>

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

Date of Hearing : 07/09/2017
Date of Decision : 07/09/2017

FINAL ORDER NO.-71144/2017.....

Per: Anil Choudhary

This appeal is preferred by the Revenue against Order-in-Appeal dated 26/02/2010.

2. Brief facts of the case are that the respondent has established a new sugar factory at village Asmoli, district Moradabad. For establishing new sugar mill the respondent purchased various machine, machinery parts and accessories thereof on duty paid documents and also fabricated machine, machinery parts and accessories thereof and installed the

same within their factory premises. For fabrication and installation of machine, machinery parts, they have purchased HR Sheet, Plate, Channel, Shape & Section, Round, Angle etc. on duty paying documents. The Department issued show cause notice dated 24/07/1995(two), 28/04/1995, 28/10/1995, 01/07/1996 & 04/11/1996 demanding duty for the period November, 1994 to August, 1996 on machine, machinery parts and accessories thereof as well as above items of iron & steel. The respondent filed replies to the show cause notices and also submitted detailed chart given use of each and every item in question. The adjudicating authority vide Order-in-Original dated 31/12/2003 allowed modvat credit of Rs.43,47,368/- on machine, machinery parts, gear motors nut & bolts etc. and disallowed modvat credit of Rs.66,07,214/- and also imposed penalty of Rs.66,07,214/-.

3. Against the above order dated 31/12/2003, the respondent filed the appeal before the Learned Commissioner (Appeals) Central Excise, Meerut-II. Learned Commissioner (Appeals) vide Order-in-Appeal No. 90-CE/MRT-II/2010 dated 26/02/2010 allowed the appeal on numbers of items in question except CO-generation system, welding machine, welding electrodes, HSD, invoices involving modvat credit Rs.10,074/- and set aside the penalty imposed.

4. Against the order dated 26/02/2010 of Learned Commissioner (Appeals), the Revenue has filed the present appeal.

5. The Learned AR for the Revenue supports the grounds of appeal raised in appeal memo.

6. The Counsel for respondent submits that against the impugned Order-in-Appeal dated 26/02/2010 for denial of modvat credit of Rs.5,94,395/- the respondent filed the appeal before the Hon'ble CESTAT New Delhi. Their Appeal bearing No. E/1613/2010-EX[SM] has been decided by Final Order No.56922/2013-SM[BR] [PB] dated 05/06/2013 reported in 2013 (297) E.L.T. 53 (Tri. – Del.) wherein the modvat credit on CO-generation system, welding electrodes, welding machine has been allowed and modvat credit on HSD and invoices not in name of assessee disallowed. It has been submitted by counsel for respondent, since the Revenue has not pointed out to the Tribunal that their appeal against the same order is also pending, they cannot raise the objection as the matter have been finalized by the Hon'ble Tribunal vide Final Order dated 05/06/2013. Further the Learned Counsel for the respondent argued that as far as the modvat credit on items of iron & steel is concerned, by applying 'user test,' the modvat credit in question is admissible. In support of above, he relied on following judgments.

I.	Hon'ble Supreme Court in the case of CCE, Coimbatore Vs Jawahar Mills Ltd. reported in 2001(132) E.L.T. 3 (S.C.)
II.	Hon'ble CESTAT Judgment in the case of DSM Sugar Vs CCE, Meerut-II reported in 2013 (297) E.L.T. 53 (Tri.-Del.)
III.	Hon'ble CESTAT, New Delhi Final Order No.420/98-NB(SM) dated 21/04/1998 in the matter of DSM Sugar Mills.
IV.	Hon'ble CESTAT, New Delhi Final Order No.91/2001-NB(SM) dated 20/04/2001 in the matter of DSM Sugar Mills.

V.	Hon'ble CESTAT, New Delhi Final Order No.1351/2007-NB(SM) dated 28/08/2007 in the matter of Dhampur Sugar Mills Ltd.
VI.	Hon'ble High Court of Chhattisgarh in the case of UOI Vs Associate Cement Co. Ltd. reported in 2016 (341) E.L.T. 175 (Chhtt.)
VII.	Hon'ble CESTAT Judgment in the case of Singhal Enterprises Pvt. Ltd. Vs CCE, Raipur reported in 2016 (341) E.L.T. 372 (Tri.-Del.)

In the end, the counsel for the respondent requested for dismissal of the appeal of Revenue in view of submissions made above and judgments relied thereon.

7. Heard both sides and perused the records.

8. We find, in the case at hand the issue involved is whether the respondent has rightly availed Modvat credit on HR Sheet, Plate, Channel, Shape & Section, Round, Angle etc. used in fabrication of machine, machinery parts and support structure necessary for installation of heavy machinery. We find, the respondent have submitted before the lower authorities chart showing use of each item involved and the Learned Commissioner (Appeals) taking into account the submissions of respondent and evidence available on record, referring and relying on number of Tribunal judgments and also Tribunal Final Order No. A/420/98-NB, dated 21/04/1998 and Final Order No. 1351/07- NB (BR), dated 28/08/2007 in the case of M/s Dhampur Sugar Mills Ltd. allowed the Cenvat credit on MS plats, Sheets, Coils, Bars, Shape & Section etc. Further, we find the Hon'ble Supreme Court in the case of CCE, Coimbatore Vs Jawahar Mills Ltd. reported in 2001 (132) E.L.T. 3 (S.C.) has held for admissibility of Modvat

credit, user test has to be applied. The Hon'ble High Court of Chhattisgarh in the case of U.O.I. Vs. Associated Cement Company Ltd. reported in 2016 (341) E.L.T. 175 (Chhattisgarh) confirmed the Order of Tribunal wherein it has been held - structural items- Angles, Channels, Plates, Rods etc. required to make machines function ~~about~~ without any vibration or movement, cannot be said to be used in construction of buildings but linked with machinery used in production of final product, therefore, the Cenvat credit is admissible. Similar view has been taken by the Tribunal in the case of Singhal Enterprises Pvt. Ltd. Vs. CCE Raipur reported in 2016 (341) E.L.T. 372 (Tri. – Del.). By taking into account the evidence available on record and submissions, we find the issue is no more res integra as held in judgments referred (Supra), the impugned order is upheld and appeal of Revenue being without any merits is dismissed.

(Dictated & Pronounced in Court)

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

Lks

प्रमाणित प्रति/Certified True Copy
12/10/2017
Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001