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: 03/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70045/2018-EX[DB] dated 02/01/2018

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/312/2012	**KISAN SAHAKARI CHINI MILLS LTD.** TILHAR, DISTRICT-SHAHJAHANPUR (U.P.)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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

Prakash kumar Singh
112, Lawyer Chamber,
Supreme court of india,
New Delhi,
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, 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/312/2012-EX[DB]

(Arising out of Order-in-Appeal No. 366-CE/LKO/2011 dated 09/11/2011 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Lucknow)

M/s Kisan Sahakari Chini Mills Ltd. **Appellant**

Vs.

Commissioner (Appeals) Customs and Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri Absent on Call for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/01/2018
Date of Decision : 02/01/2018

FINAL ORDER NO.-70045/2018

Per: Archana Wadhwa

Nobody appeared for the appellant, we have gone through the impugned order and heard the learned DR.

2. We note that the impugned order stands passed in de novo proceedings, when the matter was earlier remanded by the Tribunal on the Revenue's appeal for re-consideration of the issue, in the light of precedent decisions. In de novo proceedings Commissioner (Appeals) allowed the Cenvat

Credit in respect of transformer, disallowed the credit in respect of plates, supporting structures and fabricated tanks etc., used by the appellant in their factory for manufacture of sugar and molasses. The said denial is on the findings that goods in question were used as supporting structures and cannot be held to be cenvatable capital goods, as also on the ground that a proper declaration was not filed in terms of the provisions of Rule 57(T) of erstwhile Central Excise Rules, 1944.

3. We note that all the items have been held to be cenvatable goods by various decisions of the higher courts. One such reference can be made to Hon'ble Gujarat High Court decision in the case of Mundra Ports & Special Economic Zone Ltd. v/s Commissioner of Central Excise & Customs reported at 2015 (39) STR 726 (Gujarat) vide which the larger Bench decision of the Tribunal in the case of Vandana Global was not agreed upon. As such we find that the appellant claim of Cenvat Credit in respect of plates, tanks and other supporting structures is proper and appropriate.

4. Similarly the denial of credit on the ground that proper intimation was not given under Rule 57(T) cannot be appreciated inasmuch as the same is only a procedural violation which substantive benefit should not be denied.

As such we find that the appellant is entitled to the credit in respect of above items and order accordingly.

5. However, credit to the extent of Rs.1,59,900/- stands disallowed for non production of proper documents. For the said amount, we remand the matter to the lower authorities with directions to the appellant to produce the documents in support of their claim.

6. Inasmuch as the appeal stands partly allowed and partly remanded, we find no justification for imposition of penalty and the same are set aside. Appeal is disposed of in above manner.

(Dictated and pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

प्रमाणित प्रति/Certified True Copy

26/02/18

सहायक पंजीकार/Asstt. Registrar

38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001

Ankit