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: 29/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71688-71689/2017-SM[BR] dated 23/11/2017

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/2402/2011 | **DSM SUGAR ASMOLI**<br>P.O. ASMOLI, DISTT. MORADABAD<br>(U.P.) |
| 2 | E/2403/2011 | **DSM SUGAR ASMOLI**<br>P.O. ASMOLI, DISTT. MORADABAD<br>(U.P.) |
| | | Name and Address of Respondent |
| 3 | | -C.C.E. MEERUT II<br>Opp. Saheed Park (Near Ashok ki Lat)<br>Delhi Road, Meerut (UP) |
| 4 | | -C.C.E. MEERUT II<br>Opp. Saheed Park (Near Ashok ki Lat)<br>Delhi Road, Meerut (UP) |

Other Appellants and Respondents as per Annexure

Copy To
5Advocate(s) / Consultant(s):

**Aalok Arora,Adv**
**82 - Mission Compound,**
**Saharanpur,**
**Uttar Pradesh**

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

**APPEAL No. E/2402,2403/2011-EX[SM]**

(Arising out of Order-in-Appeal No.193-194-CE/MRT-II/2011 dated28.06.2011 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Meerut-II.)

DSM Sugar Asmoli — Appellant (s)

Vs.

C.C.E.- Meerut-II — Respondent (s)

Appearance:
Shri Aalok Arora (Adv) — for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR — for Respondent

**CORAM:**
**Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**

Date of Hearing/Decision :- 23.11.2017

FINAL ORDER NO-71688-71689/2017

**Per: Mrs. Archana Wadhwa:**

After hearing Shri Aalok Arora (Adv) appearing for the appellant and Shri Gyanendra Kumar Tripathi appearing for the Revenue, I find that the dispute relates to availability of Cenvat Credit in respect of various iron and steel articles, which stands utilized by the respondents, as supporting structurals.

2. On going through the impugned orders, I find that the Revenue has relied upon the larger Bench decision of the Tribunal in the case of Vandana Global Ltd. v. CCE, Raipur [2010 (253) E.L.T. 440], wherein it was held that the explanation added to the definition of capital goods w.e.f. 07.07.2009 has to be held as explanatory and thus retrospective in nature. The said decision of the Tribunal was considered by the Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Ltd. v. CCE & Cus [2015 (39) S.T.R. 726 (Guj.)], wherein the said decision was not approved by the Hon'ble High Court. Learned

Advocate has also drawn my attention to a recent decision of the Madras High Court in the case of Commissioner of Central Excise, Salem vs. Madras Aluminium Co. Ltd.: 2017 (349) E.L.T. 133 (Mad.) laying down that MS angles were used as support structure which are cenvatable items.

3. Inasmuch as the matter stands decided, I find no reason to uphold the impugned order of the authorities below. Accordingly, the same are set aside and appeal allowed with consequential relief to the appellant.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

GS

प्रमाणित प्रति/Certified True Copy
23/01/18
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