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: 24/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71572-71576/2017-SM[BR] dated 20/11/2017

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/3025/2011	CCE & ST GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
2	E/70365/2017	**Kanoria Sugar And General Manufacturing Ltd** Captainganj Kushi Nagar UP
3	E/70366/2017	**Kanoria Sugar And General Manufacturing Company Ltd** Captainganj khushi nagar UP 274301
4	E/70722/2016	**Indian Potash Ltd** Unit:khadda KUSHINAGAR UP
5	E/70967/2016	**Kanoria Sugar & General Manufacturing Company Ltd** Captainganj, KUSHI NAGAR UTTA R PRADESH 274301

	Name and Address of Respondent
6	C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
7	C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
8	C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

9

MODI SUGAR MILLS
Modi Nagar, Ghaziabad,(U.P.)

10

C.C. & C.E. & S.T.-Allahabad
38...M G MARG...CIVIL LINES,
ALLAHABAD,
UTTAR PRADESH-211001

Other Appellants and Respondents as per Annexure
Copy To
11 Advocate(s) / Consultant(s):

Pawan Shree Agrwal, Advocate
B-9, SAGAR APARTMENTS,
6, TILAK MARG,
NEW DELHI,
DELHI

12 **KAPIL VAISH**
2nd Floor, Part-a Krishna
Janki Palace, 35-c, Rampur
Garden, Civil Lines, Bareilly,
Up
BAREILLY

13 **STUTI SAGGI**
102,MAHALAXMI
ENCLAVE,STANLEY
ROAD,CIVIL
LINE,ALLAHABAD,UTTAR
PRADESH

14 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

24 C.D.R.   25 Office Copy   26 Second Folder Copy   27 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.3025/11

Arising out of O/A No.117-CE/GZB/2011-12 dated 22.06.2011 passed by Commr. (Appeals) of Central Excise, Customs & S.Tax, Ghaziabad

Commr. of Central Excise, Customs & S.Tax, Ghaziabad

...APPELLANT(S)

VERSUS

M/s Modi Sugar Mills

RESPONDENT (S)

APPEARANCE

Md. Altaf, Asstt. Commr. (A.R.) for the Revenue
Ms. Stuti Saggi, Advocate for the Respondent (s)

Ex.Appeal Nos.70722/16,70967/16,70365,70366/17

Arising out of O/A Nos.199-CE/APPL-ALLD/LKO/2016 dated 10.03.2016, 442-CE/APPL-ALLD/LKO/2016 dated 06.07.2016, 03-CE/APPL-ALLD/LKO/2016 dated 06.01.2017 & 02-CE/APPL-ALLD/LKO/2016 dated 06.01.2017 all passed by Commr. (Appeals) of Central Excise, Customs, Allahabad

M/s Indian Potash Ltd.
M/s Kanoria Sugar & General Manufacturing Company Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs & S.Tax, Allahabad

RESPONDENT (S)

APPEARANCE

Shri Kapil Vaish, C.A. & Shri Amit Mahajan, Adv. for the Appellant (s)
Shri Pawan Kumar Singh & Shri Pradeep Kr.Dubey, both Supdt. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 20. 11. 2017

Final ORDER NO. 71572 - 71576 /2017.

Per Mrs.Archana Wadhwa :

All the appeals, one filed by the Revenue and other by the Appellants, are being disposed of by a common order, as the issue involved in all of them, is identical.

2. After hearing both sides, I note that the issue relates to availability of Cenvat credit of duty paid on various iron and steel items, like, angles, plates, channels, Sections, Rods, Joist etc. which stands used ~~by~~ for fabrication of capital goods and for repair and maintenance of capital goods. In some of the appeals, welding electrodes used for repair and maintenance of machines have also been denied the benefit of the Cenvat Credit of duty.

3. I find that the issue stands covered by the various decisions of the Tribunal. However, reference can be made to the latest decision of the Tribunal in the case of Commr. of Central Excise, Lucknow Vs. Oudh Sugar Mills Ltd. vide Final Order No.70978/2017 dt. 11.08.2017, wherein, the identical products were held to be cenvatable. Reference can also be made to the another decision of the Tribunal in the case of U.G.Sugar & Indus. Ltd. Vs. Commr. of Central Excise, Meerut I reported in 2017 (347) ELT 491 (Tri.-All.). The various inputs used for fabrication of the Biogas plant as also other capital goods installed in the sugar factory, were held to be cenvatable.

4. 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 reported at 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 reported ate 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. reported at 2017 (349) E.L.T. 133 (Mad.) laying down that MS angles were used as support structure which are cenvatable items.

5. 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 the appeals filed by the appellants are allowed with consequential relief to the appellants and the appeal filed by the Revenue is rejected.

Dictated and pronounced in the open Court

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
13\12\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