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: 14/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70978/2017-SM[BR] dated 11/08/2017

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/3163/2007 | CCE LUCKNOW<br>7-A, Ashok Marg, Lucknow. |
| | | Name and Address of Respondent |
| 2 | | OUDH SUGAR MILLS LTD.<br>HARGAON, SITAPUR (UP),, |

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Copy To

3Advocate(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, 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/3163/2007-EX[SM]

(Arising out of Order-in-Appeal No. 112-114-CE/LKO/2007 dated 25/09/2007 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

| | |
|---|---|
| **Commissioner of Central Excise, Lucknow** | **Appellant** |
| Vs. | |
| **M/s. Oudh Sugar Mills Ltd.** | **Respondent** |

Appearance:

| | |
|---|---|
| Shri Pawan Kumar Singh, (Superintendent) AR | for Appellant |
| Ms. Stuti Saggi (Advocate) | for Respondent |

CORAM:

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

Date of Hearing : 11/08/2017
Date of Decision : 11/08/2017

FINAL ORDER NO. 70278/2017........

**Per: Anil Choudhary**

The Revenue have disputed the allowability of Cenvat credit ~~of~~ on various items like Steel Plates, Angles, Channel, Joists, TMT flat bars, Tor Steels, Ms Flats, Packing, Jointing Sheet, Steam Metallic Packing, Jointing Gasket Sheet, Aluminum Sheet, Bagasse Carrier Chain, Forged Chain and Welding Electrodes. Relying on the ruling of Larger Bench of this Tribunal in Triveni Engineering & Industries and also in Jaypee Rewa Plant Vs. CCE [2004 (57)RLT 739] wherein Larger Bench of this Tribunal h~~o~~eld that credit on Welding

Electrode is not admissible, so far the credit on Angles, Channels, Joists etc. is concerned the ground of Revenue that the said goods have been used in repairing, maintenance of the existing plant and machinery or construction work for fabrication staging and supporting structure of equipment/plant.

2. The issues in this appeal are related to allowability of Cenvat credit taken on items like "Steel Plates, Angles, Channel, Joists, TMT flat bars, Tor Steels, Ms Flats, Packing, Jointing Sheet, Steam Metallic Packing, Jointing Gasket Sheet, Aluminum Sheet, Bagasse Carrier Chain, Forged Chain and Welding Electrodes." The respondent is a sugar mill engaged in the manufacture of sugar and molasses from sugar cane. They have taken Cenvat credit during the period April, 2005 to July, 2005. Vide show cause notice dated 22/06/2006, on the same issue for earlier period i.e. April, 2005 to May, 2005 another show cause notice No. 09/06 dated 27/04/2006 was also issued to the party, objection was raised as regards allowability on the aforementioned items. Vide common Order-in-Original, adjudicating authority disallowed the credit for Rs. 7,73,112/- and Rs. 12,24,227/-, he has also imposed a penalty of Rs. 10,00,000/-.

3. Being aggrieved, the respondent – assessee preferred an appeal before Commissioner (Appeals) who set aside the Order-in-Original. Departmental appeal was also disposed off.

4. Being further aggrieved department is before this Tribunal.

5. Heard the parties.

6. So far the first issue is concerned regarding allowability on welding electrodes, It have been urged by the Learned Counsel for the respondent 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 existing plant and machinery production may be theoretically possible but in practical, production cannot be effected of the taxable or dutiable goods without repair to plant and machinery and also without repair and replacement or erection of new machinery, time to time. The Learned Counsel further relied on the ruling of Division Bench of the Tribunal in the case of *Singhal Enterprise Ltd Vs 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 credit on welding electrodes is allowable.

7. The next items in disputes are MS Angles, MS Channels and Steel Plates etc. 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, qualify as capital goods for Cenvat credit, Further MS Channels 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, on these angles and channels Cenvat credit is allowable as inputs. I find that allowability for fabrication of 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.

8. The next item of dispute is regarding Joist and TOR Steel. It is stated that Joist have been used in staging of Juice Sulphiter, Juice weighing scale and sugar beater. Joist have been uses as supporting structure of equipment in the factory of production but, not used in civil work admittedly. I hold

that joist etc. also qualifies for Cenvat credit following the ruling of India Cement Ltd. (Supra). Further, another ruling in the case of *India Cement Ltd.* reported at *2015 (321) ELT (209)* the Hon'ble Madras High Court have held that Cenvat credit on MS rods/Jointing sheet, MS Channels, etc. used for erection of capital goods that is fabrication of structural to support various machines like crusher, kiln, hoppers, etc. is available, as without such structural support, machinery could not be erected and would not function, which is not disputed. Accordingly, the Cenvat credit on the items in question is available. The other item TMT Flats bars is also held qualified for Cenvat credit following the ruling of *Ultratech Cement Ltd. vs. C.C.E., Jaipur reported at 2017-TIOL-91-CESTAT-DELHI.*

9. Under similar facts and circumstances:-

(a) MS Flats bars qualified for Cenvat credit following the ruling of *DSM Sugar vs. C.C.E., Meerut reported at 2017 (346) E.L.T. 407 (Tri.-Del.)*.

(b) Aluminum Sheet qualified for Cenvat credit following the ruling of *Dhampur Sugar Mills Ltd. C.C.E., Meerut reported at 2016 (344) E.L.T. 285 (Tri.- All.)*.

(c) Bagasse Carrier Chain qualified for Cenvat credit following the ruling of *C.C.E., Lucknow Vs. Ramgarh Chinni Mills reported at 2010 (251) E.L.T. 139 (Tri.-Del.)*.

(d) Forged Chain also qualified for Cenvat credit following the ruling of *Rathi Steels and Power Ltd. Vs. C.C.E. reported at at 2015 (328) E.L.T. 9 (All.)*.

(e) Jointing Gasket Sheet also qualified for Cenvat credit following the ruling of *Dwarikesh Sugar Industries Ltd. Vs. C.C.E., Meerut reported at 2007 (220) E.L.T. 938 (Tri.-Del.)*.

(f) Steam Metallic Packing is used as supporting structure equipment. It is used for steam hot water & used to control high pressure and temperature of steam.

10. To sum up I hold that the respondent assessee have rightly taken Cenvat credit on the items in dispute in view of my findings here in above. Accordingly, the appeal filed by Revenue is dismissed. The respondent assessee shall be entitled for consequential benefits in accordance with law.

(Dictated & Pronounced in Court)

Sd/-

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

*Lks*

प्रमाणित प्रति/Certified True Copy
25/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
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38 M. G. MARG,ALLAHABAD-211001