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: 06/03/2018

To

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

Final Order No. A/70443-70444/2018-SM[BR] dated 15/02/2018

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/532/2012	CCE, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
2	E/2229/2011	CCE, MEERUT-II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
		Name and Address of Respondent
3		U.G.SUGAR & INDUSTRIES LTD. (SUGAR & DISTILLERIES UNITS), SEOHARA, DISTT. BIJNOR-UP
4		SHRI S.K. MAHESHWARI, EXECUTIVE VICE PRESIDENT OF THE UNIT M/S U.G.SUGAR & INDUSTRIES LTD. (SUGAR & DISTILLERIES UNITS), SEOHARA, DISTT. BIJNOR-U.P

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

MS. STUTI SAGGI
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

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 Nos. E/2229/2011 & 532/2012-EX[SM]

(Arising out of Order-in-Appeal No. 123-129/CE/MRT-II/2011 dated 23/05/2011 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Commissioner of Customs & Central Excise, Meerut-II **Appellant(s)**

Vs.

M/s U.G. Sugar & Industries Limited (in Appeal No. E/2229/2011) **&**

Shri S.K. Maheshwari (in Appeal No. E/532/2012) **Respondent(s)**

Appearance:

Shri Rajeev Ranjan (Joint Commr.) for Appellant(s)
Ms. Stuti Saggi (Advocate) for Respondent(s)

CORAM:

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

Date of Hearing : 15/02/2018
Date of Decision : 15/02/2018

FINAL ORDER NOs. 70443-70444/2018

Per: Anil G. Shakkarwar

Above stated two appeals are taken together for decision because they are arising out of common impugned Order-in-Appeal No. 123-129/CE/MRT-II/2011 dated 23.05.2011 passed by Commissioner (Appeals), Customs and Central Excise, Meerut-II.

2. Through the said order learned Commissioner (Appeals) has set aside the penalties imposed upon both the

respondents in the present two appeals. Aggrieved by the said order Revenue is before this Tribunal.

3. The contention of Revenue in the grounds of appeal is that the learned Commissioner (Appeals) has appreciated that they are different decisions and judgments for interpretation of admissibility of Cenvat Credit of duty paid on capital goods and that the respondents availed Cenvat Credit on welding electrodes wrongly even after passing of the final order of this Tribunal in their own case on 26.11.2007 and, therefore, the learned Commissioner (Appeals) should not have set aside the penalties.

4. Heard the learned AR who has presented the grounds of appeal.

5. Heard the learned counsel for the respondents. Learned counsel for the respondents has relied on ruling of High Court of Chhattisgarh in the case of Ambuja Cements Eastern Ltd. vs. Commissioner of Central Excise, Raipur reported at 2010 (256) E.L.T. 690 (Chhattisgarh) and submitted that it was held in *Para 20* of the said ruling that Modvat Credit on welding electrodes was held as admissible by this Tribunal in the case of Birla Jute & Industries Ltd. and the Civil Appeal filed against the same was dismissed by Hon'ble Supreme Court.

6. Having considered the rival contentions and perusal of records I find that the learned Commissioner (Appeals) has dismissed the penalties imposed on both the respondents for availing the Cenvat Credit on welding electrodes. The Revenue's contention is that in 2007 in the respondents own case this Tribunal had held that Cenvat Credit on welding electrodes was not admissible. In those circumstances penalty should not have been waived by learned Commissioner (Appeals). I find that in the above referred ruling of Chhattisgarh High Court in the case of Ambuja Cement Eastern Ltd. (supra), the Hon'ble High Court has referred to dismissal of Civil Appeal by Hon'ble High Court in the appeal against the decision of this Tribunal in the case of Birla Jute & Industris Ltd. where it was held that Modvat Credit on electrodes was admissible. For appreciation Para 20 of said ruling is represented below:-

"20. We have already observed in the foregoing paragraphs that the definition of "input" occurring under Rule 2(g) of the Cenvat Credit Rules, 2002 takes in its ambit all inputs, except the specifically excluded items under Rule 2(g), which have been employed in the manufacturing process, whether directly or indirectly and whether contained in the final product or not, and are entitled for Cenvat credit. The civil appeals against the decision of the Delhi Tribunal in Birla Jute & Industries Ltd., wherein it has been held that Modvat credit

is admissible for Electrodes and Calibration Gas Mixture (Welding equiptments), but not admissible for explosive under Rule 57A of the Central Excise Rules, 1944, have been further dismissed by the Supreme Court confirming the observations of the Delhi Tribunal, in view of judgment of the Supreme Court in Jawahar Mills Ltd."

7. I find that as per the doctrine of merger after the Hon'ble Supreme Court having dismissed Civil Appeal filed against this Tribunal's decision in the case of Birla Jute & Industries Ltd., this Tribunal's finding that Cenvat Credit was admissible on electrodes has reached finality, therefore, I hold that there is no merit in the appeal filed by Revenue. Both the appeals filed by Revenue are dismissed. The respondents shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

Sd/-

ANIL G. SHAKKARWAR

(MEMBER TECHNICAL)

Anku

प्रमाणित प्रति/Certified True Copy
13/03/18
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