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: 06/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71305/2017-EX[DB] dated 02/11/2017

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/4077/2010	**DSCL SUGAR (THE GENERAL LMANAGER)** RUPAPUR DISTT. HARDOI.
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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

Kapil Vaish
2nd floor, Part-A Krishna
Janki Palace, 35-C, Rampur
Garden, Civil Lines, Bareilly,
Uttar Pradesh

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/4077/2010-EX[DB]

(Arising out of Order-in-Original No.21/COMMR/LKO/CX/2010 dated 30/07/2010 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s DSCL Sugar **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 02/11/2017
Date of Decision : 02/11/2017

FINAL ORDER NO.....71305/2017...

Per: Anil Choudhary

The issue in this appeal is arising out of Order-in-Original No.21/COMMR/LKO/CX/2010 dated 30/07/2010 passed by Commissioner of Central Excise & Service Tax, Lucknow.

2. The issue in this appeal relates to admissibility of Cenvat credit of items being plates, shape and section, M.S. Angles, G.P. Coil/Sheet, H.R. Coil, C.R. Strip, M.S.

Channels, etc. procured and used by the appellant, a manufacturer of V.P. sugar and molasses during the period 2004-05 to 2005-06. Revenue issued with a show cause notice proposed to disallow the credit on the ground that these items had been used either for repair and maintenance of plant and machinery or modification of their existing plant and machinery. It was also alleged that the items are embedded to the earth and do not fulfill the conditions of movablility and marketability. It also proposed to invoke extended period of limitation.

3. The Original Authority vide the impugned order disallowed the credit by holding that items used for repair and maintenance or modification of plant and machinery are not eligible for credit. The learned Commissioner has further observed that items embedded to earth are also not covered in the definition of capital goods. Learned Commissioner also observed that items of Chapter 72 and 73 are not eligible for the credit. Aggrieved by the said order, appellant preferred appeal before this Tribunal.

4. Heard the learned Counsel for appellant, who has argued that there is no dispute on the use of the steel items in their factory in as much as show cause notice

states that the impugned goods have been used for repair and maintenance of plant and machinery or for modification of the plant and machinery. He further submits that during the relevant period the capacity of plant had been expanded and the impugned goods have been used as structural support for capital goods. Further, he relies on the precedent decision of this Tribunal in the case of M/s Dhampur Sugar Mills Ltd. Final Order No.70219-70221/2017 dated 22.02.2017 and also the Madras High Court Decision in the case of India Cement Ltd. Vs CESTAT, Chennai reported at 2015 (321) ELT 209. He also submits that the entire demand is barred by limitation in as much as there is no suppression on their part. Moreover, they have been submitting monthly return regularly.

5. Heard the learned A.R. for Revenue who has relied on the impugned Order-in-Original.

6. Having considered the rival submissions, we find that the issue of Cenvat credit on the items in question has been decided in favour of appellant-assessee, in the case of M/s Dhampur Sugar Mills Ltd. (supra) and India Cement Ltd. (supra) wherein the goods had been used as support structural of capital goods or for modification of

plant and machinery. Further, in the case of Hindustan Zinc Ltd. reported at 2000 (214) ELT 510 the Hon'ble Rajasthan High Court has held that plates used for repair and maintenance of the machinery which are further used for manufacture of excisable goods are eligible for Modvat credit.

7. Accordingly, we allow this appeal and set aside the impugned order. Appellant shall be entitled for consequential relief, as per law.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
27/11/17
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