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: 23/01/2018

To

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

Final Order No. A/70260-70261/2018-SM[BR] dated 22/01/2018

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/2107/2011	**UTTAM SUGAR MILLS LTD.** BARKATPUR, TEH.- NAJIBABAD, DISTT. BIJNOR (U.P.)
2	E/2506/2011	**CCE, MEERUT-II** Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
		Name and Address of Respondent
3		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
4		UTTAM SUGAR MILLS LTD Barkatpur, Tehsil- Najibabad, Distt- Bijnor (U.P.)

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

ASHISH VAISH (C.A)
2nd Floor, Part-a Krishna Janki Palace, 35-c, Rampur Garden, Civil Lines, Bareilly, Up

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. 1

APPEAL No. E/2107 & 2506/2011-EX[SM]

(Arising out of Order-in-Appeal No. 259-260-CE/MRT-II/2011 dated 28/06/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut-II)

M/s Uttam Sugar Mills Ltd. (In Appeal No. E/2107/2011) &
Commissioner of Central Excise, Meerut-II (In Appeal No. E/2506/2011)
Appellant/Assessee

Vs.

Commissioner of Central Excise, Meerut-II (In Appeal No. E/2107/2011) &
M/s Uttam Sugar Mills Ltd. (In Appeal No. E/2506/2011)
Respondent/Revenue

Appearance:

Shri Ashish Vaish, (C.A.), for Appellant/Assessee
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent/Revenue

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Date of Hearing & Date of Decision : 20/12/2017
FINAL ORDER NO. 70260-70261/2018

Per: Anil Choudhary

These cross appeals have been preferred against OIA dated 28th of June, 2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Meerut-II. The issue in these appeals is, whether the appellant/assessee have rightly availed Cenvat credit on air conditioners, which is installed in the Control Panel room of the factory and also Cenvat credit on items being PVC Pipe, PVC End Cap, PVC Elbow/Tap, Black Steel Tubes, M. S. Tubes, Galvanized Steel Tubes, M. S. Tubes Welded, M. S. Beam, etc.

2. The brief facts are that the appellant/assessee is engaged in manufacture of V. P. Sugar & Molasses. The allegation in the Show Cause Notice dated 23/11/2009 is

that the factory premises were inspected on 29th of July, 2009 & 30th of July, 2009. During the visit/inspection the correctness of Cenvat credit availed on capital goods was verified. It appeared that the appellant have availed Cenvat credit of Rs.20,67,066/- on different varieties of M. S./PVC pipes and tubes during the period August, 2005/March, 2006 to August 2005 to August, 2007 including credit on air conditioners. Mr. Syed Abid Ali, Manager (Systems) and also the Authorized Signatory of M/s USML, his statement was recorded wherein he stated that pipes and tubes have been used in the fabrication of structures for the building/shed and railings in the factory. It appeared to Revenue that the Cenvat credit is not taken in compliance with the Cenvat Credit Rules and accordingly invoking the extended period of limitation, Cenvat credit of Rs.21,28,126/- was proposed to be disallowed under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 along with proposal to impose penalty with further proposal to impose penalty upon Mr. Syed Abid Ali, Manager (Systems) and also Authorized Signatory of M/s USML.

3. The SCN was adjudicated on contest and the proposed demand was confirmed along with equal amount of penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Act, 1944. Further penalty of Rs.2,00,000/- was imposed on Mr. Syed Abid Ali, Manager (Systems) and also Authorized Signatory of M/s USML under

Rule 15(1) of Cenvat Credit Rules, 2004. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order have been pleased to uphold the disallowance of Cenvat credit on PVC/MS pipes and tubes etc. However, has been pleased to allow the Cenvat credit of Rs.61,060/- on the air conditioners, recording the finding that these are installed in the Control Panel of the factory. The learned Commissioner (Appeals) further observed that the issue is wholly interpretational and as such there is no element of any fraud, negligence and suppression, etc. on the part of the appellant/assessee's case and accordingly he was pleased to set aside the penalty on the appellant company and Mr. Syed Abid Ali, Manager (Systems) and also Authorized Signatory of M/s USML.

4. Being aggrieved the appellant/assessee before this Tribunal. The ld. counsel for the appellant/assessee states that admittedly tubes and pipes and fittings thereof have been provided in the definition of capital goods in Rule 2(a)(vi) of Cenvat Credit Rules, 2004. Accordingly, they have properly taken the credit. Further it is admitted fact that the appellant/assessee have received the goods in the factory of production and utilized these items in the factory of production. Thus, the Cenvat credit is available both as capital goods and also as inputs. The definition of input in Rule 2(k) provides that input means all goods used in relation to manufacture of final products or for any other purpose,

used within the factory of production. The learned counsel further states that in view of the findings of the ld. Commissioner that there is no element of fraud, suppression, etc. in taking the credit, the extended period of limitation is not attracted and as such the show cause notice be held to be not maintainable.

5. The learned A. R. argues on behalf of the Revenue presenting their appeal, which is against deletion of penalty by the learned Commissioner (Appeals) by the learned Commissioner (Appeals). The ld. A. R. reiterating the grounds of appeals states that the appellant/assessee had not produced the copy of ER-I/Cenvat returns to show that the detail and inspection of the goods were declared to the Department. On a perusal of the ER-I return format, it is seen that there is no column in the form to mention the detailed nature of the goods. The appellant had not produce any document, wherein they had informed the Department that they were availing the Cenvat credit on the disputed goods, which have being used in the fabrication of structures of building and shed and railings. This fact came to the knowledge only when the preventive staff visited the factory.

6. Having considered the rival contentions, I find that tubes and pipes and fittings thereof which are the items under dispute are specifically mentioned in the list of capital goods in Rule 2(a)(A)(vi) of Cenvat Credit Rules, 2004. Further, I find that admittedly the goods have been used in

the factory of production. Further, I find that the contention of the appellant that most of the pipes and fittings in question have been used in the plant effluent treatment plant, for clearing godown water, for harvesting, for process piping/juice, piping for concentrated juice syrup, piping for boiling house/Mill House. Only one M. S. Beam-invoice relates to usage of structure for Plant & Machinery. Accordingly, I hold that the appellant is entitled to Cenvat credit under the provisions of Rule 2(a) & (k) of Cenvat Credit Rules, 2004, read together. Moreover, it is observed that so far usage of iron and steel etc. in the structures for Plant & Machinery is concerned the same has been held to be allowable by the ruling of Hon'ble Madras High Court in the case of India Cement Ltd.

7. Accordingly, the appeal by assessee is allowed and the disallowance of Cenvat credit of Rs.20,67,066/- is set aside.

8. To sum up, Appeal No. E/2506/2011 filed by Revenue is dismissed & Appeal No. E/2107/2011 filed by appellant is allowed with consequential relief, in accordance with law.

(Dictated in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
26/02/18
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