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: 07/03/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70516/2018-EX[DB]** dated **06/03/2018**

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/52890/2014	**Dwarikesh Sugar Industries Ltd** Dwarikesh Dham, Vill-Bhagwanpur Fulwa Tehsil-Faridpur, Bareilly UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3Advocate(s) / Consultant(s).

Aalok Arora,Adv
82 - Mission Compound,
Saharanpur,
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

Customs, Excise & Service Tax Appellate Tribunal
Regional Branch, Allahabad

Appeal No. Ex. 52890 of 2014

(Arising out of Order-in-Original No.MRT-EXCUS-000-COM-023—13-14 dated 03.02.2014 passed by Commissioner, Central Excise, Meerut-II)

M/s Dwarikesh Sugar Industries Limited ...Appellant

Vs

CCE Kanpur ...Respondent

Appearance:

Present for the Appellant :Sh. Aalok Arora, Advocate
Present for the Respondent :Sh G. K. Tripathi, Asstt. Commissioner (AR)

Coram:

HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR G. SHAKKARWAR, MEMBER (TECHICAL)

Date of hearing: 09.01.2018
Date of decision: 06/03/2018

Final Order No. 70516/2018

Per Archana wadhwa,

The short issue involved in the present appeal is as to whether the appellant is entitled to the cenvat credit of service tax paid on various construction services used for civil construction of CMD's bungalow, staff quarters (residential buildings), temple, roads, guest house, boundary walls for officers colony & CMD's bungalow, hawan kund, pathway for hawan kund, dormitory building and security barracks etc.

2. After hearing both the sides, we find that an identical issue was considered by the Tribunal in the same assessee's case and vide its decision reported as ***Dwarikesh Sugar Ind. Limited vs CCE&ST- 2016***

(44) STR 87 (Tri, Mum.) had considered an identical demand and has set aside the confirmation on the point of time bar, though the precedent decisions of various authorities were considered. As regard merits of the case, we note that the Hon'ble A.P. High Court in the case of ***CC&CE, Hyderabad-III vs. ITC Limited -2013 (32) STR 288 (A.P.)*** has held that maintenance of residential colony is an input service inasmuch as it would not be feasible for the assessee to carry on its manufacturing activities without maintaining the staff colony. If the maintenance of the residential colony has been held to be having nexus with the manufacturing activities or the business of the appellant, the construction of the same would admittedly be an input services inasmuch as, as observed by the Andhra Pradesh High Court, the providing and maintaining residential colony for the staff is directly and intrinsically linked to its manufacturing activities and could not be excluded from consideration. As such we hold that the construction services, in dispute are cenvatable input services.

3. Apart from that we also note that the demand for the period June 2007 to January, 2009 was raised by a show cause notice dated 30.09.2009, by invoking the longer period of limitation. In the earlier cases of the same assessee, it has been held that there was no suppression or malafide on the part of the assessee so as to justifiably invoke the longer period. By applying the ratio of the same; demand in the present case is held to be barred by limitation for the major period.

4. In view of the above, the appeal succeeds on merit as also on limitation (though partly). Accordingly, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced on 16/03/2018)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Pant

प्रमाणित प्रति/Certified True Copy
14/03/18
C.E.S.T.A.T.
38, M. G. MARG, ALLAHABAD-211001