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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5656/2004 - EX[DB] Date 25/09/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
M/S D.S.M. SUGAR,KASHIPUR
(UNIT OF DSM AGRO PRODUCT LTD. DISTT. UDHAM
SINGH NAGAR (U.P)
244714

M/S D.S.M. SUGAR,KASHIPUR Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 728/08-EX **EX[BR]** dated 27-8-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
MR.RAJESH KUMAR
24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.DELHI
3 C.D.R
~~4 I.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 5656 of 2004

[Arising out of the Order-in-Appeal No. 213-CE/MRT-II/2004 dated 21/09/2004 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s D.S.M. Sugar — Appellant

Versus

CCE, Meerut — Respondent

Appearance

Shri Rajesh Kumar, Advocate – for the appellant.

Shri V. Choudhary, Authorized Representative (DR)– for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 27/08/2008.

FINAL Order No. 728/08-EX Dated : ____________

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby benefit of Modvat credit in respect of M.S. Angles, H.R. Coil, M.S. Plate, M.S. Round, M.S. Joist, HR Sheets, Plates and channels and articles of Rubber sheet, Asbestos fiber/yarn packing material was disallowed on the ground that the same are in the nature of raw material or components/parts of capital goods and there is no provision under Rule 57Q to grant credit on such raw material of components.

2. Contention of applicant is that during the relevant period, as per provisions of Rule 57D (2) of Central Excise Rules, the credit of specified duty is available in case any intermediate product has come into existence during the course of manufacture or inputs or capital goods as defined in Rule 57Q and such capital goods are not chargeable to duty of excise. The contention is also that the

appellant are engaged in manufacture of sugar and molasses and their plant requires frequent repairs and the items in question are used for repair and maintenance of specified capital goods, therefore, are entitled for the credit. The appellant relied upon the decision of Hon'ble Rajasthan High Court in the case of **Union of India vs. Hindustan Zinc Ltd.** reported in **2007 (214) E.L.T. 510 (Raj.)**.

3. Contention of revenue is that as per the provisions of Rule 57Q of Central Excise Rules, the credit is available in respect of the duty paid specified goods and also to components spares and accessories of the specified goods. The onus is on the appellants to show that items in question are used as accessories or components of capital goods as the onus is not discharged hence, impugned order is rightly passed.

4. We find that Hon'ble Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Ltd. (Surpa) held that M.S. plates used for repair and maintenance of machinery are necessary for running of plant and up-keeping of machinery directly involved in the manufacturing of products and are entitled for credit. In the present case, the credit was denied on the ground

that the items in question are in the nature of raw material of components/parts of the capital goods and there is no provision under Rule 57Q to grant credit on such raw material or components. We find, as per the definition of capital goods, the spares, accessories and components of the specified goods are also entitled for credits. In the present case, appellant to show that items in question are used as components, spares and accessories of the specified goods. In these circumstances, we find the matter requires reconsideration. The impugned order is set aside and the matter is remanded back to the Adjudicating Authority to decide afresh after affording an opportunity to the appellant. The appellants are directed to produce evidence in this regard to the Adjudicating Authority. The appeal is disposed of by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK