

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

Appeal No. E/5678/2004 - EX[DB]

Date 26/05/2009

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

To :  
M/S TITAWI SUGAR COMPLEX  
TITAWI- DISTT. MUZAFFARNAGAR (U.P.)  
M/S TITAWI SUGAR COMPLEX

C.C.E. MEERUT-I

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 370/2009-EX

EX[DB] dated 13-5-09

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-I

UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

3 C.D.R

~~4 J.C.D.R~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

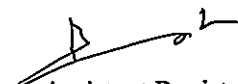
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

16 Office Copy

17 Guard file

18. HON'BLE PRESIDENT.

  
Assistant Registrar  
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Excise Appeal No. 5678 of 2004**

(Arising out of Order-in-Appeal No. 611/CE/MRT-I/2004 dated 18.10.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I).

DATE OF HEARING : 13.05.2009  
DATE OF DECISION : 13.05.2009

**FOR APPROVAL AND SIGNATURE :**

**HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT**  
**HON'BLE MR. M. VEERAIYAN, 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 ?         | Yes  |
| 2. | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ? | Yes  |
| 3. | Whether their Lordships wish to see the fair copy of the Order ?                                                                       | Seen |
| 4. | Whether Order is to be circulated to the Departmental Authorities?                                                                     | Yes  |

**M/s Titawi Sugar Complex**

....

**Appellant**

(Rep by Sh. Atul Gupta, C.S.)

VERSUS

**CCE, Meerut-I**

....

**Respondent**

(Rep. by Sh. B.S. Suhag, DR)

**CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT**  
**HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)**

*Final* ORAL ORDER NO. 370/09-EX

**PER M. VEERAIYAN :**

This appeal is directed against the order of the Commissioner (Appeals) no. 611/CE/MRT-I/2004 dated 18.10.2004.

2. Heard both sides.

3.1 The relevant facts are that, the appellant, a sugar mill, ~~and~~ had procured capital goods on which credit was taken and they had also received components, spares and accessories meant for the capital goods; they had also received several inputs.

3.2 The original authority has raised demand holding that credit taken by the appellant is not available in the following circumstances :

- (a) A sum of 44,575/- relating to chem ash, which was used to clean the boiler tubes by de-scaling was not used in the manufacture of the final products;
- (b) A sum of Rs. 1,269/- on defoamers for which declaration has not been filed;
- (c) Certain components, spares and accessories meant for conveyors and other machinery did not fall under category (a), (b) (c) under Rule 57-Q;
- (d) A sum of Rs. 4,60,510/- relating to goods for which the declaration required under Rule 57-G(5), which was mandatory, has not been filed;
- (e) During 1996, on the direction of the Superintendent of Central Excise intimating that the credit was not available on certain materials, they reversed the credit immediately. It is claimed that the said reversal was under protest and they were waiting for nearly four years for show cause notice for vacating the said protest and as they have not received any show cause notice they have taken suo motu credit in January, 1999. On this

ground, the Department has held that, taking of credit of Rs. 6,30,995/- in the first place was erroneous and accordingly demanded the said amount and also held that the entire amount of Rs. 6,30,995/- has been wrongly utilized towards payment of duty on goods cleared by them; that the said goods have to be held cleared without payment of duty and demanded another sum of Rs. 6,30,995/-;

- (f) A sum of Rs. 7,596/- were taken on the invoices which did not contain relevant details.

3.3 After denying the credit, equal amount of penalty has been imposed by the original authority. The Commissioner (Appeals) has upheld the order of the original authority.

4.1 Learned Company Secretary submits that, Chem Ash has been used in relation to the manufacture and they are eligible for the benefit of credit in terms of the decision of this Tribunal in the case of **CCE, Jaipur vs J.K. Synthetics Ltd.**, 1998 (98) ELT 507. He concedes that, no declaration has been filed in respect of defoamers. As regards parts of conveyors, opto indicators, they are parts meant for conveyors and machinery which are capital goods. Though, there is a restriction in respect of capital goods in terms of classification, there is no restriction that the components, spares and accessories which go into those specified capital goods should fall under any particular tariff item. He relies on the decision of the Tribunal in the case of **Jubilant Organosys Ltd. vs CCE, Pune-III**, 2007 (219) ELT 927.

4.2 As regards credit denied amounting to Rs. 4,60,510/-, he submits that, they relate to different components, parts and accessories of various goods which were not individually listed in the declaration to the Department but broad description were given. There was no clarification sought for details of those items. Copies of RG-23 Part I & Part II were

being submitted to the Department along with returns indicating the description and actual credit taken on monthly basis.

4.3 As regards Rs. 6,30,995/-, he submits that, credit was reversed under protest in 1996. However, he fairly concedes that the protest was not in the format prescribed in terms of Rule 223-B of Central Excise Rules and was not addressed to the Assistant Collector as required under the said Rules. Since no show cause notice was issued, they have taken back the credit and utilized the same. The demand of duty once on the ground that the credit has been wrongly taken and then again on the ground that the same credit has been utilized, has led to duplication of the demand.

4.4 As regards demand <sup>of</sup> Rs. 7,596/-, Rs. 1,269/-, he submits that, he is not contesting the same.

5. Learned DR submits that, chem ash has not been directly used in the manufacture; the appellant has not given description of the various items indicating the description as envisaged under Section 57-G(5). He also submits that, the appellant was not entitled to take suo motu credit of the debit amount as held by the Larger Bench of this Tribunal in the case of **BDH Industries Ltd. vs CCE (Appeals), Mumbai-I, 2008 (229) ELT 364 (T-LB)**.

6.1 We have carefully considered the submissions from both sides. At the outset, we find that, the appellant has debited Rs. 6,30,995/- in 1996; admittedly, they have not followed the procedure for filing ~~under~~ protest by writing a communication to the Asstt. Collector. Debiting in cenvat account means payment of duty and the amount stands transferred to Government account. The question of appellant taking suo moto credit does not arise. As settled by the Larger Bench in the case of **BDH Industries Ltd.** (supra), they are not eligible to take such credit. However, it is not proper to demand once on the ground that the credit has been taken wrongly and then again the

same amount on the ground that credit has been utilized. We hold that a sum of Rs. 6,30,995/- is payable by the appellant. Once credit taken in the RG-23 Part II was debited, it amounts to payment of duty to the Government account. The question of the appellant taking suo motu credit does not arise. The utilization of the said credit has led to clearance without payment of duty. Therefore, penalty on this account is warranted. However, taking into account the entire facts and circumstances of the case, we reduce the penalty on this account to Rs. 3 lacs (rupees three lacs only).

6.2 Regarding the denial of credits of Rs. 12,691/- and Rs. 7,596/-, the same are confirmed as uncontested.

6.3 As regards chem ash, which has been used to clean the boiler tubes by descaling, we hold that, such a use has been only in relation to the manufacture of final products as held in the case of **J.K. Synthetics Ltd.** (supra). Similarly, we hold that, in respect of Rs. 16,302/- relating to parts of conveyor and opto indicator, there is no need for the said parts <sup>to</sup> ~~should~~ fall under the classification mentioned under Section 57-Q (a), (b) & (c) as held in the case of **Jubilant Organosys Ltd.** (supra).

6.4 Regarding the amount of Rs. 4,60,510/- as submitted by the learned Company Secretary, they have filed the declaration in broad terms; they have maintained the RG-23 Part I & II on day-to-day basis; there is no dispute about the receipt of the said goods and use of the same in the manufacture by the appellant. Learned DR submitted that filing of declaration is mandatory under Section 57-T(5). As broad description of these capital goods have been declared to the Department, the mere non-listing of the same cannot be held to be against the mandatory provision as they were undisputedly maintaining the RG-23 Part-I & II on a day-to-day

basis and submitting returns to the Department. Therefore, the denial of the credit is not justified.

7. In the light of the above, we hold that the demand of Rs. 6,30,995/-, Rs. 1,269/- and Rs. 7,596/- are confirmed and penalty of Rs. 3 lacs (rupees lacs only) is sustained. Rest of the demand and penalty is set aside.

8. The appeal is disposed of in the above terms.

**(JUSTICE R.M.S. KHANDEPARKAR)**  
**PRESIDENT**

**(M. VEERAIYAN)**  
**MEMBER (TECHNICAL)**

Golay