

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

Appeal No. E/822 /2006-SM[BR]

Date 09/01/2008

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

To :
M/S GANGA KISAN SAHKARI CHINI MILLS LTD.
MORNA, DISTT MUZAFFARNAGAR(UP)

M/S GANGA KISAN SAHKARI CHINI MILLS LTD.

CCE, MEERUT-I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.26/2008-SM[BR] dated 6.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE, MEERUT-I
MANGAL PANDEY NAGAR MEERUR
2. Adv. / Consult SHRI. BIPEN GARG ADV.
B-1/1289-A. VASANT KUNJ NEW DLHI-70
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.822/2005-SM

(Arising out of order in appeal No.206/CE/MRT.I/05 dated 2.12.2005
passed by the Commissioner (Appeals), Customs & Central Excise, Meerut)

For approval and signature:

Hon'ble Mr.S.S. Kang, Vice President)

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 should 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 Departmental authorities?
-

M/s Ganga Kisan Sahkari Chini Mills Ltd Appellants
(Rep. by Shri Bipen Garg, Advocate)

Vs

CCE, Meerut-I

Respondent
(Rep. by Shri B.S. Suhag, JDR)

Coram: Hon'ble Mr S.S. Kang, Vice President

Date of Hearing: 6.12.2007

Per S.S. Kang:

Final Order No.

26/08-SM(BR)

Heard both sides. The appellant filed this appeal against the impugned order whereby demand in respect of waste and scrap of capital goods is confirmed and credit of Rs.55,840/- was denied in respect of DG set

on the ground that the same is not used in the factory for production of goods and penalty was imposed.

The contention of appellant is that the scrap of capital goods was cleared during the period April to December, 2002. During this period, there was no rule under Cenvat Credit Rules or under the Excise Rules for payment of duty in respect of the scrap of capital goods. The contention is that w.e.f. 16.5.2005, Rule 35(a) of Cenvat Credit was introduced which provides payment of duty in respect of clearance of waste and scrap of capital goods.

The contention of revenue is that there is a finding by the lower authorities that the appellant cleared used capital goods under the guise of scrap therefore, duty was rightly demanded. In rebuttal, the contention of appellant is that during the relevant period there was no provision under the Cenvat Credit Rules for demanding duty in respect of scrap of used capital goods when cleared from the factory. In the show cause notice, the specific allegation that appellant sold MS scrap, chain, casting and therefore, it cannot be said that appellant cleared old and used capital goods. The appellant relied upon the decision of Precot Mills Ltd Vs CCE Tirupathi reported in 2007 (208) ELT 510 whereby duty in respect of waste, scrap of old and used capital goods was set aside.

I find that the allegation in the show cause notice that appellant cleared scrap of old and used capital goods. During the period April to December, 2002, there was no provision under the Rules demanding duty in respect of waste and scrap of capital goods. The Rule 3(5A) of Cenvat credit Rules was introduced w.e.f. 16.5.2001 asking duty in respect of waste and

scrap of capital goods. In absence of any Rule, I find that demand of duty in respect of waste and scrap of capital goods is not sustainable and hence set aside.

In respect of credit on DG set, the allegation in the show cause notice is that DG set was used to provide electricity in case need for electricity in the residential area of the factory. The contention of appellant is that this allegation is only of verbal enquiry. There is no evidence to this fact.

I find that there as allegation in the show cause notice that the DG set was used for supply of electricity in the residential area. The appellants failed to rebut this fact by way of producing evidence that DG set is used for production of goods in the factory. In absence of such evidence, I find no infirmity in the impugned order whereby credit is denied.

The appellant has wrongly availed the credit in respect of DG set. Hence the appellants are liable for penalty. The penalty is reduced to Rs.15,000/-. The appeal is disposed of as indicated above.

(Order dictated and pronounced in the open Court).

MPS*

(S.S. Kang)
Vice President