

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/220 /2006-SM[BR]

Date 16/01/2008

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

To :
M/S THE DHAMPUR SUGAR MILLS LTD.
DHAMPUR (NR) DISTT.-BIJNOR,(UP)
246761

M/S THE DHAMPUR SUGAR MILLS LTD.

CCE,MEERUT-II

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 83/2008-SM[BR] dated 4.12.2007
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-II
MANGAL PANDEY NAGAR MEERUT-II
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
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
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Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

COURT NO.III.

Appeal No.E/220 of 2006-SM (BR)

(Arising out of the Order-in-appeal No.283-CE/MRT-II/2005 dated 29.11.2005 passed by the Commissioner (Appeals), Central Excise, Meerut.)

For approval and signature:

Hon'ble Mr. P.K. Das, Member(Judicial)

- | | | |
|----|--|---|
| 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.The Dhampur Sugar Mills Ltd.

Appellant.

Versus

CCE, Meerut-II

Respondents

Appearance

Shri Atul Sinha, C.S for the appellants..

Shri S. Gautam, Authorised Departmental Representative (DR) for the respondent.

CORAM: Hon'ble Mr. P.K.Das, Member(Judicial)

Date of decision:4.12.2007.

Rinal Order No. 83 / 08-SM (BR)

● **Per P.K. Das:**

Heard both sides and perused the records.

2. The appellant filed this appeal against the denial of credit on Asbestos and Graphite Packing, CAF Jointing/Asbestos/Steel Flats/Shape and Sections/Angles and channels/Iron and Steel Bars and Rounds, Delo. The appellants are engaged in the manufacture of sugar and molasses classifiable under Headings 17.01 and 17.03 of the Schedule to the Central Excise Tariff Act, 1985.

3. The eligibility of the Credit on these items are discussed below:-

(i) Asbestos and Graphite Packing, CAF Jointing and Asbestos Yarn Steam Joints, etc.:- The Commissioner (Appeals) observed that these items were used as insulation material in turbine in hot pipelines of vapour and it prevents the hot water of cooling due to which increase the efficient of turbine and used in jointing and packing of pipes and valve to prevent leakage of juice and leakage of various joints, which is essential for making sugar items in question. It is seen that the Tribunal in the case of Dwarikesh Sugar Industries Ltd. Vs. CCE, Meerut-II vide Final Order No.1264-1270/07-SM(BR) dated 16.8.2007 held that denial of credit in respect of Asbestos Jointing Gasket sheets, etc. are not justified. So, the denial of credit on these items is set aside.

(ii) Steel Flat:-The Commissioner (Appeals) observed that these items were used for making supporting structure for OC filter,

repair of pipeline, for making of molasses tank. He also observed that they can be termed as raw materials of the capital goods and under the scheme of Cenvat Credit, there is no provision for allowing credit on raw material of capital goods. The Tribunal in the case of Commissioner of Central Excise, reported in 2007 (210) ELT 69 (T-D) held that the inputs used in the manufacture of the capital goods, which in turn used in the manufacture of final product, credit cannot be denied. Hence, the denial of credit on steel flats used in the manufacture of capital goods which in turn used in the manufacture of finished product is not justified.

(iii) Shape and Sections/Angles and Channels/Iron and Steel, Bars and Rocks: The Commissioner (Appeals) observed that these items were used for repairing damaged parts of capital goods and not covered by the definition of capital goods. It is seen that the Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. – 2007 (214) ELT 510 (Rajasthan) held that M.S./S.S. plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product, eligible to avail Modvat credit. The Tribunal in the case of the L.H. Sugar Factories Ltd. Vide Final Order No.1354-1360/07-SM (BR) dated 5.7.07 following the decision of the Hon'ble High Court allowed credit on M.S.Plates and packing materials. It is also noted that the decision of the Hon'ble High Court in the case of Hindustan Zinc Ltd. (supra) was upheld by the Hon'ble Supreme

Court as reported in 2007 (214) ELT A-115 (SC). In the present case, there is no dispute that the goods were used for repairing of the damaged capital goods. So, the denial of credit on these items are not justified.

(iv) Delo:- The Commissioner (Appeals) observed that this item is used as a lubricant in DG set. It has been observed that the appellant claimed these items as capital goods. But it is eligible as input. The Commissioner (Appeals) denied the credit on the ground that the appellant cannot claim the credit as input as they declared as capital goods and followed the decision of the Larger Bench in the case of CCE, Indore Vs. Surya Roshinin Ltd. reported in 2001 (128) ELT 293 (Tribunal-Larger Bench). It is seen that the Larger Bench of the Tribunal in the case of CCE, Meerut Vs. Modi Rubber Ltd. reported in 2000 (119) ELT 197 (Tribunal-LB) held as under:-

“21. In Appeal No.E/1814/97-NB, we find that the question whether Modvat credit on lubricants as inputs under Rule 57A is liable to be allowed where the goods are declared as capital goods under Rule 57Q instead of as inputs under Rule 7A is also involved. We note that a similar question was considered by a Two-Member Bench of this Tribunal in the case of Devyani Beverages Ltd. Vs. CCE, Meerut – 1999 (33) RLT 73 wherein the Bench held that the declaration filed by the assessee in terms of Rule 57Q was sufficient for the purpose of extending credit on glass bottles which were inputs within the meaning of Rule 57A. We also hold similar view in the instant case and sustain the appellant’s challenge against the impugned order of the Commissioner (appeals) denying Modvat credit on the ground that the declaration was not

in terms of Rule 57A. The appeal is, therefore, allowed.”

3. So, there is no reason to deny the credit on these items. In view of the above discussion, I find that the appellants are entitled to avail credit on these items. It has also denied credit on account of improper duty paying documents. The ld. Advocate submits that Rule 57G of the erstwhile Central Rules, 1944 does not provide authentication by the Central Excise officer in the dealer's invoices. The ld. Advocate fairly submits that this issue is not raised before the appellate authority. So, I find that this is required to be examined by the adjudicating authority. Accordingly, the impugned order insofar as denial of credit on the above items is set aside and denial of credit on the basis of improper duty paying documents, it is remanded back to the adjudicating authority to examine the documents and the provisions of the erstwhile Central Excise Rules as contended by the ld. Advocate. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 4.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.