

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/235 /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)

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.101/2008-SM[BR] dated 5.12.2007
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
14. Office Copy
15. Guard file


~~Assistant Registrar~~
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No.2, R.K. Puram, New Delhi-110066.
Principal Bench, New Delhi**

COURT NO. III

Excise Appeal No. 235 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 235/CE/MRT-II/2005 dated 06/10/2005 passed by The Commissioner (Appeals), Central Excise, Meerut – II.]

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 (Procédure) 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 The Dhampur Sugar Mills Ltd. Appellant

Versus

CCE, Meerut – II Respondent

Appearance

Shri Atul Gupta, C.S. - for the appellant.

Shri S.L. Meena, Authorized Representative (SDR) - for the Respondent.

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

DATE OF HEARING : 05/12/2007.

Final Order No. 101/08-5M(BR) Dated : 05/12/07

Per. P.K. Das :-

The appellant filed this appeal against denial of credit on Shape and Section and M.S. Angle & Joist of Iron and Steel. Both the authorities below observed that the appellants had not disclosed the exact use or place where these products were used. It has further been observed that the appellants only made statement that these items were used in the repair and maintenance on various items of plants and machinery.

2. The learned advocate on behalf of the appellant submits that the Hon'ble Punjab & Haryana High Court in the case of **Commissioner of Central Excise, Ludhiana vs. Hero Cycles Limited** reported in 2007 (207) E.L.T. 663 (P & H) held that parts of capital goods used by assessee in fabrication, erection or installation of Cold Rolling Mills are eligible for credit. He also submits that the appellant in reply

to show cause notice by letter dated 2nd February 1998 disclosed the use of these items.

3. The learned DR on behalf of the revenue reiterates the findings of the Commissioner (Appeals). He submits that these items cannot be treated as components and therefore the statement made by them in their reply to show cause notice has no effect.

4. After hearing both the sides and on perusal of the record, it is seen that the 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.)** held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which were used for manufacture of final product, eligible to avail modvat credit. The Hon'ble Punjab & Haryana High Court in the case of Hero Cycles Limited (Supra) rejected the appeal filed by the revenue on the question of goods used by assessee in fabrication, erection or installation of cold rolling mill can be treated as capital goods. On perusal of reply to show cause notice I find that the appellants declared these items were in the nature of components, treated in the New

fermentor and affluent treatment. Fermentor is an equipment where molasses is fermented in presence of yeast for manufacture of Ethyl Alcohol which in turn is consumed for manufacture of Acetaldehyde and Ethyl Acetate. The authorities below observed that the appellant had not mentioned the exact use and place where all these items were deployed. I find that such findings of the Commissioner (Appeals) are not sustainable. The Tribunal in the case of **Commissioner of Central Excise, Indore vs. Hotline Glass Ltd.** reported in 2007 (210) E.L.T. 69 (Tri. – Del.) held that inputs used in the manufacture of capital goods which in turn used in final product are eligible for credit. In this case, these items were used as component and fitted in the machineries, which was not disputed by both the authorities below. Therefore, denial of credit on these items is set aside. The appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK