

**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/1263/2006-SM[BR]

Date 31/01/2008

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

To :  
M/S D.S.M SUGAR KASHIPUR  
(A UNIT OF DSM PRODUCT LTD), KASHIPUR, DISTT.  
UDHAM SINGH NAGAR (UTTRANCHAL)

M/S D.S.M SUGAR KASHIPUR

Appellant

C.C.E. MEERUT II

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No.214/2008-SM[BR] dated 17.1.2008  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM 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. 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 AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No.1263 of 2006-SM (BR)**

[Arising out of order in appeal No.294-CE/MRT-II/05 dated 30.11.2005 passed by the Commissioner (Appeals), Central Excise, Meerut-II.]

**Date of Hearing/ Decision:17.1.2008**

**For approval and signature:**

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

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- |  |   |                |
|--|---|----------------|
| 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? | : | )<br><i>PK</i> |
| 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. D.S.M. Sugar

...Appellants  
[Rep. by None]

Vs.

CCE, Meerut-II

...Respondent  
[Rep. by Mr.S. Gautam, Authorized Representative (DR)]

**CORAM: Mr. P.K. Das, Member (Judicial)**

*Per* Order No. 214/08-SM(BR) /Dated:17.1.2008

**Per P.K. Das:**

- None appeared on behalf of the appellants in spite of issue of notice.
2. Heard the ld. DR on behalf of the Revenue and perused the records.

3. The appellant filed this appeal against denial of credit on H.R. Coil, Plates, shape & Sections, S.S. Plate, H.R. Coil Sheet, M.S. Angle/Plates, G.P./G.C. Sheets, Plain Plates, etc. The appellants contended that these items were used as parts and accessories of the machines falling under chapter 84 of the Central Excise Tariff Act and within the definition of capital goods. The Commissioner (Appeals) observed that Iron and steel products are falling under chapter 72, which has excluded from the purview of definition of capital goods. I find that the Hon'ble Rajasthan High Court in the case of Union of India Vs. Hindustan Zinc Ltd. reported in 2007 (114) ELT 510 held that M.S., S.S. Plates are eligible for Cenvat credit used in the maintenance and repairs in the workshop. In the present case, both the authorities below have not verified the use of these items. Accordingly, the impugned orders are set aside and the matter is remanded back to the adjudicating authority to verify the use of these items and to pass order after considering the decision of the Hon'ble Rajasthan High Court. Needless to say that the adjudicating authority shall give proper opportunity of hearing before the decision. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 17.1.2008.

( P.K. Das )  
Member (Judicial)

Ckp.