

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/2007/2006-SM[BR]

Date 04/02/2008

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

To :
THE OUDH SUGAR MILLS LTD.
HARGAOM SITAPUR(UP)

THE OUDH SUGAR MILLS LTD.

CCE,LUCKNOW

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 251/ 2008- SM[BR] dated 28.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE,LUCKNOW
DO
2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Dceparchi 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
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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.

E/APPEAL Nos.2007/06-SM

[Arising out of Order-in-Appeal No.30-CE/LKO/06 dt.27.2.06 passed by the
Commissioner(Appeals), Lucknow)

For approval and signature:

Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

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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? | yes |
| 2. | Whether it would 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? | yes |
| 4. | Whether order is to be circulated to the :
Department Authorities: | |
-

M/s. The Oudh Sugar Mills Ltd.

Appellant

Versus

C.C.E., Lucknow

Respondent

Appearance

Sh. Rajesh Chhibber, Adv. For Appellant

Ms. Archana Pandey, Authorised Representative(Jt.CDR) For
Respondent

Coram: Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

Date of decision: 28.1.08
final Order No. 251/08-SM(BR)

Per A.K.Srivastava:

This appeal has been filed by the appellants against the order-in-
appeal dt.27.2.06 passed by the Commissioner(Appeals). The

Commissioner(Appeals) vide the impugned order, while setting aside the penalty imposed by the original adjudicating authority, has upheld the disallowance of the Modvat credit of Rs.1,39,113/-.

2. Heard both sides and perused the records.

3. The appellants are engaged in the manufacture of Cane Sugar, Molasses and DEA falling under Tariff Heading 17.01, 17.03 and 2204.10 respectively of Central Excise Tariff Act,1985.

4. The issue involved in the instant appeal is whether Cenvat credit is ~~also~~ admissible on HREC Sheet, G.P.Sheet and Plates (all items of Chapter 72) as "capital goods" under Rule 2(b) of Cenvat Credit Rules,2002. The case relates to the period Dec'03 to Jan'04. The functional uses of the above referred items, as detailed in reply to the SCN by the appellants, are as under:

- i) H.R.E.C. Sheet(S.No.1 & 3 of Annexure – A of the SCN)
This has been used in Sugar Hoppers trough for conveying/carrying sugar to sugar graders from Centrifugal machines.
- ii) G.P.Sheet(S.No.2 & 4 of Annexure-A of the SCN)
Has been used for making juice trough through which juice of individual mill is received for further process.
- iii) Plates (S.No.5 & 7 of Annexure-A of the SCN)
These have been used for making columns for new crystalizers, Sulphur burner, 9 MV turbine and new mill.
- iv) Plates (S.No.6 of Annexure-A of the SCN)
Have been used for making columns of new Oliver, Semikestner, 100 Ton Pan, Juice heater, 9MW turbine & C/F machines.

5. The functional use of the impugned goods would indicate that these are used as components, spares or accessories for repair and maintenance or for manufacture and fabrication of the machineries (falling under chapter

heading No.84.38), which in turn are used for the manufacture of sugar and molasses. Therefore, the impugned goods are eligible to the Cenvat credit in terms of Rule 2(b)(iii) of the Cenvat Credit Rules,2002. I find that the similar items like Plain Plates, Steel Flats, Alloy Steel Bars, Joists and Aluminum Sheets etc. were held to be eligible capital goods for the purpose of availment of Cenvat credit in appellant's own case by the Tribunal by its Final Order No.1561-62/06-SM dt.26.10.06. Further, In the case of M/s. Shakumbari Sugar and Allied Inds. Ltd. vs CCE, Meerut-I, the Tribunal, vide its Final Order No.1005/07-SM dt.1.6.07, has held that the M.S. Plates, H.R.Sheets and Angles are eligible to the Cenvat credit. Similarly in the case of M/s. Triveni Engg. Inds. Ltd. vs CCE, Meerut-I, the Tribunal, vide its Final Order No.1599/06-SM dt.26.10.06 has held that Plain Plates, Steel Flats, Aluminium Sheets etc. are eligible to the Cenvat credit.

6. I further find that the Hon'ble Rajasthan High Court in the case of UOI vs Hindustan Zinc Ltd. reported in 2007(214)ELT.510(Raj.)has held that the items MS/SS plates are essential supplement to the plant and machinery for use in manufacturing goods, for its greater efficiency and better results and thus, it is an integral part of process with which the primary machines are engaged. Therefore, there is no impediment for the goods in question qualifying as capital goods eligible for Modvat credit. Appeal filed by the Revenue against this decision of the Hon'ble Rajasthan High Court has been dismissed by the Hon'ble Supreme Court as reported in 2007(214)ELT.A115.

7. The reliance placed by Ld. Jt.CDR in the case of Kisan Co-operative Sugar Factory Ltd. vs CCE, Meerut-I reported in

2007(79)RLT.810(CESTAT-Del.) for disallowing the Cenvat credit on the impugned goods does not seem to be correct because in that case it was held that in the absence of the specific use of the Plain Plates, H.R.Sheets and Angles, such general items cannot be considered as component, spare or accessory of the capital goods. This is not the case here. The appellants have given the details as noted above about the specific uses of the impugned goods, which show that these items are used as component, spare or accessory of the machinery and hence are eligible to the Cenvat credit in terms of Rule 2(b)(iii) of Cenvat Credit Rules,2002.

8. In the light of the above discussions and following the ratio of the case laws cited by the appellants, I hold that the Cenvat credit of Rs.1,39,113/- is admissible to the appellants. I order accordingly. The appeal filed by the appellants is allowed.

(Operative part of the order pronounced in the open Court)

(A.K.Srivastava)
Member Technical

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