

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/280 /2006-SM[BR]

Date 05/02/2008

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


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

M/S DHAMPUR SUGAR MILLS LTD.

CCE, MEERUT-II

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 256/2008-SM[BR] dated 26.12.2007
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 AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 280 of 2006 -SM (BR)

[Arising out of order in appeal No. 257-CE/MRT-II/2005 dated 09.11.2005
passed by the Commissioner (Appeals) Central Excise, Meerut-II]

Date of Hearing/ Decision: 26.12.2007

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? | : | 20 |
| 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
[Rep. by Mr. Atul Gupta, Co. Secy. for the appellant]

Vs.

CCE, Meerut-II Respondent
[Rep. by Mr. A. Rastogi, Authorised Representative (DR) for the respondent]

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

Final ORDER No. 256/08-SM(BR)

Per P.K. Das:

Heard both sides and perused the records.

2. The appellant filed this appeal against denial of cenvat credit on MS Channel, Sheet, HRC Plate etc. and packing material. Credit was also denied on the ground that the invoices^{here} issued in the name of DSM Limited, Dhampur endorsed to the appellants.
3. It is seen from the impugned order that credit was denied on sheet, MS Channel, HRC Plate, shape & section, H.R. Coils and channels as these items are commonly known to the construction/ fabrication material. The learned Counsel submits that the appellant had given the detailed use of the said material as component/parts of capital goods. I find that the authorities below had not considered the use of these items and therefore, denial of credit is not sustainable. The uses of these items are required to be examined by the adjudicating authority.
4. Regarding the denial of credit on rubber, sheet, style (packing), AMP (asbestos Rope), AMP 32/121, Asbestos Gland Packing, CAF-AMJ-321, Champion Hoses style, etc. were used as^{packing} material in turbine in hot pipelines of hopper, which increase the efficiency of turbine and use in jointing and packing by valve to prevent the leakage of juice. I find that the Tribunal in the case of KCP Sugar & Indus. Ltd., vs. CCE, Guntur reported in 2004 (178) ELT 275 (Tri-Bang.) allowed the credit on asbestos packing materials etc. used for preventing leakage in pipes connected with flanges to transfer cane juice from one station to another in processing plant in sugar mills. In view of the decision of the Tribunal in the case of KCP Sugar & Indus. Ltd., (supra) denial of credit on these materials is set-aside.
5. Credit was denied on the ground that modvat declaration was not filed. Learned Counsel relied upon the decision of the Tribunal in the case

of J.B.M. Tools Ltd., vs. CCE, Pune reported in 2002 (144) ELT 561 (Tri. Mumbai). It has been held that modvat credit cannot be denied when declaration was not filed in view of sub-clause (ii) of sub-rule 13 of erstwhile Rule 57T of Central Excise Rules, 1944. So, the denial of credit for non filing of modvat credit declaration is set-aside.

6. It has been denied credit that there is no procedure for endorsing invoices of modvatable items by one manufacturer to other. Learned Counsel drew the attention of the bench the decision of the Tribunal in their own case M/s The Dhampur Sugar Mills Limited vide final order No. 6 & 7/2001-D dated 8.1.2001 wherein it has been held that the benefit of Notification No. 67/95 is available to the appellants as the excisable goods have been used in the factory of the manufacture only. The contention of the learned Counsel is that both the units are situated in the same premises and therefore the credit taken on the basis of endorsed invoices issued by the other units situated in the same premises cannot be denied. I find force in the submission of the learned Counsel and the matter is required to be verified by the adjudicating authority in the light of the decision of the Tribunal in the appellants' own case. He also relied upon the decision of the Tribunal in the case of CCE, Coimbatore vs. CCE, reported in 2003 (160) ELT 825.

7. In view of the above, denial of credit on asbestos, fibre and packing materials etc. is set-aside. Regarding the denial of credit on shape and section, channel, sheet etc. is set-aside and the matter is remanded back to the adjudicating authority to examine the use of these items. Denial of credit for non filing of modvat declaration is set-aside. Credit denied on

endorsed invoices is set-aside and the matter is remanded back to the adjudicating authority to examine the documents and to decide afresh in the light of the decision of the Tribunal. Needless to say that the adjudicating authority shall give proper opportunity of hearing before passing the order. The appeal is allowed in the above terms.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]