

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/279 /2006-SM[BR]

Date 06/02/2008

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


To :
M/S DHAMPUR SUGAR MILLS LTD.
DHAMPUR,N.R.,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.260/2008-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. 279 of 2006 -SM (BR)

[Arising out of order in appeal No. 259-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)

- | | | |
|--|---|-----|
| 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? | : | AS. |
| 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. 260/08-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, packing material etc. Credit was also denied

on the ground that address with the name of the appellants manufacturing unit were not mentioned in the invoices.

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 as 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 the same items and therefore, denial of credit is not sustainable. The uses of the said 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 ^{packing} as material in turbine in hot pipelines of hopper, which increase the efficiency of turbine and joining and packing were used with 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 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 packing material is set-aside.

5. Cenvat credit is denied on the ground that invoices were not endorsed in the name of the appellants' manufacturing unit. It has been observed by the Commissioner (Appeals) that invoices were addressed to C-1, Rajendra Nagar, Bareilly and the invoices were not even endorsed to the manufacturing unit. Learned Counsel on behalf of the appellant submits that the finding is erroneous inasmuch as the invoices were not

addressed to C-1, Rajendra Nagar, Bareilly. He submits that in this case the goods were transferred within their own units which is permissible under the law as held by the Tribunal in the case of CCE, Noida vs. Flex Industries Limited reported in 2004 (178) ELT 1029 (Tri.Del.) I find force in the submission of the learned Counsel and the duty paying documents are required to be examined by the adjudicating authority.

6. In view of the above discussions, denial of credit on rubber sheet, style (packing), AMP (asbestos Rope) shape & section is set-aside. The denial of credit on M.S. channel, sheet, HRC plates, the matter is remanded back to the adjudicating authority to examine the use of this item. Regarding the denial of credit on the invoices not endorsed in the name of the appellants' manufacturing unit as alleged is set-aside and the matter is remanded back to the adjudicating authority to examine the invoices and to decide the matter 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]