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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/2779 TO 2789 /2008 –SM [BR] Date 04/03/2008

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

To :
1-11 M/S THE DHAMPUR SUGAR MILLS LTD
DHAMPUR(NR) DISTT-BIJNOR(UP)
246761

M/S THE DHAMPUR SUGAR MILLS LTD — Appellant
Vs
CCE MEERUT-II — Respondent

I am directed to transmit herewith a certified copy of Final order NO. 362 -372/2008 –SM [BR] dated 18.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   CCE MEERUT-II
   MANGAL PANDEY NAGAR,MEERUT
2. Adv. / Consult SHRI . BIPIN GARG ADV.
   B-1 /1289-A. VASANT KUNJ NEW DELHI 110070
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 Publictions (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 Nos. 2779 to 2789 of 2006 –SM (BR)
[Arising out of order in appeal No. 90-91/CE/MRT-II/06 dated 24.04.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-II]

Date of Hearing/ Decision: 18.02.2008

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

NA

M/s Dhampur Sugar Mills Limited — Appellant
[Rep. by Mr. Bipin Garg, Advocate for the Appellant]

Vs.

CCE, Meerut-II — Respndent
[Rep. by Mr. A.K. Rastogi, Authorised Representative (DR)]

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

Final **ORDER** No. 362-372/08-SM(BR)

Per P.K. Das:

Common issue involved in these appeals and therefore all are taken up for disposal.

2. The appellant filed these appeals against denial of credit on S.S. Plate, H.R.S.S. Plate, Hot Rolled Plate, C.R.S.S. Coil, Cold Rolled Strip, H.R. Sheets/ C.R. S.S. Sheets, S.S. Coil, H.R. Coil, Shape and Sections, Asbestos packing, Graphite packing, Iron and Steel product, copper strips & aluminium sheet, RMP Tee Nozzle for Cooling, EN 9L Load Screw Part of cane unloader, part of Fibrizer hammer.

2. After hearing both the sides and on perusal of the records, the admissibility of credit on these items are discussed below:-

(i) H.R. Sheets, H.R. Coil, Shape and Sections etc. of Iron and Steel product:-

The Hon'ble Rajasthan High Court in the case of Union of India vs. Hindustan Zinc Ltd., reported in 2007 (214) ELT 510 (Raj.) held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacture of final product are eligible for cenvat credit. The Tribunal in the case of CCE, Indore vs. Hotline Glass Ltd., reported in 2007 (210) ELT 69 (Tri. Del.) held that input used in the manufacture of capital goods which in turn used in the manufacture of final product, credit cannot be denied.

The Commissioner (Appeals) observed that these items were brought into the factory and fitted into machineries cannot be considered as components, spares or accessories of capital goods. The Commissioner (Appeals) also observed that the impugned goods can at best be termed as raw materials of capital goods and under modvat credit scheme there is no provision for allowing credit on raw materials of capital goods, which in my view is contrary to the decision of the Tribunal in the case of Hotline Glass Ltd., (supra). Hence, in view of the decision of the Hon'ble High Court of Rajasthan, these items were used in machineries and eligible for credit. It is made clear that credit is not available on these items if used for structural and building materials.

(ii) Asbestos Packing, Graphite Packing etc.:-

It is seen that these items were used to make leak proof at joints of pipes used for manufacture of finished product. The Tribunal in the case of KCP Sugar & Industries Ltd., vs. CCE, Guntur reported in 2004 (178) ELT 275 (Tri. Bang.) reported in 2004 (178) ELT 275 (Tri. Bang.) held that Asbestos packing/ compressed asbestos fibres used for preventing leakage in pipes connected with flanges to transfer cane juice from one station to another in processing plant in sugar mill are eligible for credit. Respectfully following the decision of the Tribunal, the credit on these items are allowed.

(iii) RMP Tee Nozzle for Cooling purpose, EN9 Load Screw Part of cane unloader, Copper Strip & Aluminium Sheet etc.:-

The appellant contended that these were used for boiling house vapor pipe line fitting for vapour handling, while RMP Tee, Nozzle, NTA were used as Mill House discharge chute for baggase discharging.

The lower authorities observed that these items are structural building materials and cannot be eligible for credit. I find that the lower authorities did not dispute the use of the material as contended by the appellant. These items were used for baggase discharging. The appellants are engaged in the manufacture of sugar, molasses and baggase, a bye-product. Therefore, these items were used in or in relation to the manufacture of final product. So, these items are eligible for credit.

3. In view of the above discussions, the appeal is allowed in the above terms.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]