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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/2294/2007-2295/2007 – SM[BR] Date 14/10/2009

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant

Vs

M/S DHAMPUR SUGAR MILLS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1249 – 1250 / 2009 –SM[BR] dated 18.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
(1-2) M/S DHAMPUR SUGAR MILLS LTD
DHAMPUR, DISTT-BIJNORE(UP)
2. Adv. / Consult SHRI RAJESH KUMAR ADV.
24-A, DDA, SFS FLAT, MOUNT KAILASH
EAST OF KAILASH NEW DELHI

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Appeal No.E/2294-2295/2007-SM

[Arising out of Order-in-Appeal No.108-109-CE/MRT-II/2007 dated 10th May 2007 passed by the Commissioner (Appeals), Meerut-II].

Date of Hearing:18.08.2009
Date of decision: 18.08.2009

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?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Meerut-II ...Appellant

Vs.

M/s. Dhampur Sugar Mills Pvt. Ltd. ... Respondent

Present for the Appellant :Shri. S.Gautam, SDR
Present for the Respondent:Shri.Rajesh Kumar, Advocate

CORAM: HON'BLE MR. P.K.DAS, MEMBER (JUDICIAL)

Final **ORDER NO.** 1249-1250/2009 SM (BR) **DATED:18.08.2009**

PER: P.K. DAS

Revenue filed these appeals against order in appeal No.108-109-CE/MRT-II/2007 dated 10th May 2007 passed by the Commissioner (Appeals), Meerut-II.

2. The relevant facts of the case in brief are that the respondents are engaged in the manufacture of V.P. Sugar and Molasses

classifiable under heading No. 1701 and 1703 of the schedule to the Central Excise Tariff Act, 1985. Show cause notices were issued proposing to disallow Cenvat credit on various items, namely, welding electrodes/Welding Rod, Chemfloc-985, Mafloc-985, S.E. Copper wire/Copper wire, Read Lead and Chem Mash. The Adjudicating Authority passed [illegible] ~~ex-parte~~ orders against each notices and allowed credit in some of the items and disallowed credit on the other items. The respondent filed appeal before the Commissioner (Appeals) against inadmissibility of credit on welding electrodes/Welding Electrodes, S.E. Copper wire/Copper wire, Read Lead, Chemfloc-985, Mafloc-985 and Chem Mash. Revenue also filed appeal against the adjudication orders, wherein credit was allowed on Copper wire / S.E. Copper Wire. Commissioner (Appeals) by order in appeal No.60-66-CE/MRT-II/06 dated 31st March, 2006 decided the appeals filed by the respondent. Subsequently, appeal filed by the Revenue was taken up for hearing. By the impugned order, Commissioner (Appeals) dismissed the appeal filed by the Revenue as not maintainable on the ground that the same adjudication orders were already merged with earlier order dated 31st March, 2006. Hence Revenue filed this appeal.

3. The ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the Revenue filed appeal against admissibility of credit on copper wire/S.E. Copper wire. He submits that the issue ~~view~~ in this appeal is different from the appeal filed by the respondent and therefore appeal filed by the revenue cannot be merged with the earlier adjudication order. The ld. DR relied upon the decision of the Hon'ble Supreme Court in the case of Mauria Udyog Ltd. vs. Commissioner of Central Excise, Delhi-II, reported in 2002 (146) E.L.T. 37 (S.C.). He also relied upon the decision of the Tribunal in the case of CCe, Jalandhar vs. Shreyans Industries Ltd. reported in 2006 72 RLT-II (CESTAT-Delhi).

4. The ld. Advocate on behalf of the respondent reiterates the findings of the Commissioner. He submits that in some cases credit on copper wire/S.E. Copper wire were disallowed against which the respondent filed appeal before the Commissioner (Appeals). Similarly, in some cases original authority allowed credit on copper wire/ S.E. Copper wire against which revenue filed appeal before the Commissioner (Appeals). He submits that Commissioner (Appeals) upheld the inadmissibility of credit on copper wire. The respondent filed appeal before the Tribunal. By final order No.379-385/2008-SM dated 31st Jan., 2008 (M/s. Dhampur Sugar Mills Pvt. Ltd. vs. CCE Meerut-II) the Tribunal allowed the credit on copper wire/S.E. Copper wire. He also submits that the Commissioner (Appeals) rightly dismissed the appeal filed by the Revenue as it is already merged in its earlier order. He relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner, Customs vs. Vasant Maganlal Chokshi reported in 2006 (77) RLT 579 (SC).

5. After hearing both the sides and on perusal of the records, it is seen that respondent filed appeal before the Commissioner (Appeals) against inadmissibility of credit on copper wire /S.E. Copper wire. Revenue also filed appeal against admissibility of credit on the same item against other Adjudication Order. It is seen that the Tribunal by Final Order dated 31st Jan., 2008 in the respondent's own case against the earlier order dated 31.3.2006 of Commissioner (Appeals) held that the respondents are eligible for availing credit of copper wire/S.E. copper wire. Therefore, the issue has already been decided by the Tribunal in favour of the respondent in earlier order of Commissioner (Appeals). As such, in my view, the question of merger of the earlier order as held by the Commissioner (Appeals) has no relevance at this stage, as the issue of admissibility of

Cenvat Credit on the same items have already been decided by the Tribunal.

6. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals) on the above reasons.

Accordingly, the appeal filed by the Revenue is rejected.

[Dictated & Pronounced in the open Court].

(P.K.DAS)
MEMBER (JUDICIAL)

Anita