TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/3032/2007 – SM[BR] Date 02/12/2009

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 U.G.SUGAR, & INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1476 / 2009 –SM[BR] dated 24.11.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S U.G.SUGAR, & INDUSTRIES LTD.
SEOHARA, DISTT. BIJNOR
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ 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
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 24.11.2009

Central Excise Appeal No.3032 of 2007-SM

Arising out of the order in appeal No.191-CE/MRT-II/2007 dated 27.8.2007 passed by the Commissioner, Customs, Central Excise , Meerut II
For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.& C.E., Meerut II ... Appellant

Vs.

M/s U.G. Sugar & Industries Ltd. .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue and Shri Bipin Garg, Advocate for the respondent

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Oral Order No. 1476/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 191-CE/MRT-II/2007 dated 27.8.2007.

2. Heard both sides.

3.1 The relevant facts, in brief, are that the respondent is a manufacturer of sugar and molasses and is availing Cenvat credit on various inputs. By a show cause notice dated 17.8.06, Cenvat credit amounting to Rs.87,209/- on paints and primer was sought to be denied. Further a sum of Rs.7,152/- availed on white lead and red lead was also sought to be denied. Original authority vide his order dated 30.11.2006 allowed the credit amounting to

Rs.87,209/- in so far as the same related to paints and primer. However, he disallowed the credit relating to white lead and red lead amounting to Rs.7,152/-. Party filed appeal before Commissioner (Appeals) in respect of disallowance of credit amounting to Rs.7,152/- which appeal stands rejected by the Commissioner (Appeals).

3.2 The Department filed appeal against the order of the original authority in so far as it related to allowance of credit of Rs.87,209/- on paints and primer.

3.3 Commissioner (Appeals) vide impugned order held that he has already passed order in appeal dated 30.3.2007 against the order of the original authority dated 30.11.2006, and since the appeal by the Department is against the same order, he cannot deal with the matter as the doctrine of merger will apply.

4. Learned SDR submits that there were two distinct issues namely, the eligibility of credit on paints and primer and the eligibility of credit on white lead and red lead before the original authority. The original authority made decisions on both the issues, one in favour of the party and one against the Department. The decision by the Commissioner (Appeals), on appeal by the party, is on the issue decided against them. The appeal filed by the Department is on a different issue though arising out of the same order. He relies on the decision of the Hon'ble Supreme Court in the case of Mauria Udyog Ltd. vs. C.C.E., Delhi II reported in 2002 (146) ELT 37 (SC) and submits that there is no merger of order of the original authority with the order dated 30.3.07 of Commissioner (Appeals).

5. Learned Advocate submits that the Commissioner (Appeals) has not decided the appeal on merits and the order of the original authority is in their favour the same has allowed credit on paints and primer.

6. After carefully considering the submissions from both sides I hold that the decision of Commissioner (Appeals) in the appeal by the party related to eligibility of credit on white lead and red lead. The issue in the Department's appeal before Commissioner (Appeals) was the eligibility of Cenvat credit on paints and primer which is a different issue. Therefore, the

doctrine of merger will not apply. Therefore, the order of the Commissioner (Appeals) dated 27.8.07 cannot be sustained. However, the submission of the learned Advocate that the Commissioner (Appeals) has not gone into the merits of the case needs to be taken into account. Accordingly, I set aside the order of the Commissioner (Appeals) and remand the matter to Commissioner (Appeals) to consider the issue afresh in the appeal filed by the Department after granting reasonable opportunity of hearing to both sides.

7. Appeal is allowed by way of remand.

(M. Veeraiyan)
Member (Technical)

scd/