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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/2102/2007 – SM[BR] Date 16/10/2009

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

To :
DSM SUGAR

ASMOLI, DISTT. MORADABAD, U.P.

DSM SUGAR — Appellant

Vs

C.C.E. MEERUT II — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1276 / 2009 –SM[BR] dated 23.7.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

   C.C.E. MEERUT II

   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
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 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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2102 OF 2007-SM

[Arising out of Order-in-Appeal No. 73-CE/APPL/MRT-II/2007 passed by the Commissioner (Appeals-II), Central Excise, Meerut-II, Meerut]

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 would 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

M/s. DSM Sugar — Appellants

Vs.

CCE, Meerut-II — Respondent

Appearance:

Shri Atul Gupta, C.A. for the appellants;
Shri V.K. Saxena, Jt. C.D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 23rd July, 2009

FINAL ORDER NO. 1276/2009-SM(BR) **dated** ________

Per P.K. Das:

The appellants filed this appeal against denial of credit on capital goods namely, forged products (i.e. forged steel shafts). The original authority allowed the credit of Rs. 28,860.00 on Forged products. Revenue filed appeal before the Commissioner (Appeals), which was allowed. Hence, the appellants filed this appeal.

2. Learned Counsel on behalf of the appellants submits that the original authority observed that forged products are in the nature of components and parts of various machines and machineries eligible for Modvat credit. He submits that use of the items in machine or machinery was not disputed by the Revenue before the Commissioner (Appeals). The only reason is that the capital goods were used after undertaking certain processes, namely grooving and shelling. He relied upon the following decisions of the Tribunal:-

a) CCE, Meerut-I vs. U.P. State Sugar Corpn. Ltd. – 2004 (169) ELT 107 (Tri. – Del.);

b) Steel Authority of India Ltd. vs. CCE, Raipur – 2008 (227) ELT 265 (Tri. – Del.)

He also relied upon the decision of the Hon'ble Rajasthan High Court in the case of UOI vs. Hindustan Zinc Ltd., reported in 2007 (214) ELT 510 (Raj.).

3. Learned Jt. CDR reiterates the findings of the Commissioner (Appeals). He submits that admittedly the forged products were not used in machine or machineries. It is the contention that certain processes were undertaken and, therefore, capital goods were not used as such in their plant and machinery and, therefore, the Commissioner (Appeals) rightly denied the credit. He also submits that Forged items being intermediate product for plant and machinery thereof cannot be considered as components/parts or accessories of capital goods.

4. After hearing both sides, it is revealed from the order of the Commissioner (Appeals) that the Revenue in their appeal stated that Forged items can be used as capital goods only after undertaking certain processes. Such processes which rendered product suitable for use as capital goods are ancillary to the manufacturing process undertaken or converting the basic raw material into finished machinery or machine or part/components. It is contended by the Revenue that Forged items are intermediate products for plant and machinery.

5. There is no dispute that the appellants received duty paid goods namely Forged products, which were used in the manufacture of final product. It is also noticed that after certain processes namely, grooving and shelling the forged items were used in plant and machinery in sugar

factory. It is noted that the processes undertaken by the appellants are in the nature of incidental for use in final product, which cannot be treated as intermediate product. Hence, there is no reason to deny credit to Forged products. I find that on the identical issue the Tribunal in the case of U.P. State Sugar Corporation Ltd. (supra) allowed the credit on Forged product.

6. In view of that, denial of credit on Forged products is set aside. Appeal filed by the appellants is allowed.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK