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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/2373/2007 – SM[BR] Date 20/10/2009

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.** 1284 / 2009 –SM[BR] dated 13.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S DHAMPUR SUGAR MILLS LTD.
DHAMPUR, DISSTT BIJNORE
2. Adv. / Consult SHRI AALOK ARORA ADV.
82, MISSION COMPOUND
SAHARANPUR-247001.

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 AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2373 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.122-CE/MRT-II/2007 dated 23.05.2007 passed by the Commissioner of Central Excise (Appeals), Meerut-II]

Date of Hearing/ Decision:13.08.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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 ...Appellants
(Rep. by Shri S. Gautam, SDR)

Vs.

M/s. Dhampur Sugar Mills Ltd. ...Respondent
(Rep. by Shri Alok Arora, Advocate)

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

Final Order No. 1284/2009 SM (BR)/Dated:13.08.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the Original Authority disallowed the Cenvat Credit on L.P. Barrels, against which the respondents/assessee filed appeal before the Commissioner (Appeals). The Original Authority allowed credit on the various chemicals viz. Cyclo Hexanon, Soda Ash, Caustic Soda, S.S. Valmet, L.P. Barrels and Welding Electrodes and transit/storage losses on molasses. Revenue filed appeal before the Commissioner (Appeals) against admissibility of credit on Welding Electrodes and loss of molasses. The Commissioner (Appeals) by Order-in-Appeal No.55-CE/MRT-II/2006 dated 27.03.2006 rejected the appeal filed by the respondent/assessee. Thereafter, the appeal filed by the Revenue was fixed for hearing before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) dismissed the appeal filed by the Revenue as not maintainable on the ground that the Commissioner (Appeals) already decided the adjudication order by earlier Order-in-Appeal dated 27.03.2006.

2. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the appeal filed by the Revenue before the Commissioner (Appeals) is on different issue, which can be decided by the Commissioner (Appeals). He relied upon the decision of the Hon'ble Supreme Court in the case of Mauria Udyog Ltd. reported in 2002 (146) ELT 37 (SC). . He also relied upon the decision of the Tribunal in the case of CCE, Indore Vs. Shreyans Industries Ltd. reported in 2006 (72) RLT 412 (CESTAT-Delhi). He submits that the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Waste Par Paper Mills

reported in 2004 SCC 747 and in the case of Vasant - 2006 (77) RLT 579 (SC) would not apply in the facts of the case as in the present case as the issues are different.

3. Ld. Advocate reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) already decided the appeal against the adjudication order, which cannot be re-opened by the Commissioner (Appeals) and it is contrary to the provisions of Section 35 of the Central Excise Act, 1944. He relied upon the decision of the Hon'ble Supreme Court in the case of Kannyarahmed.

4. After hearing both the sides and on perusal of the records, I find that the adjudicating authority allowed credit on welding electrodes and transit/storage losses and disallowed credit on L.P.Barrels. Revenue filed appeal before the Commissioner (Appeals) against admissibility of credit on welding electrodes and losses of molasses. It is noted that Commissioner (Appeals) had not decided admissibility of Cenvat credit of welding electrodes and losses of molasses in the appeal filed by the assessee. The Hon'ble Hon'ble Supreme Court in the case of Mauria Udyog Ltd. held as under:-

> **4.**It is evident from the facts noticed above that the principle of merger has no applicability. The appeal of the Revenue was restricted to the reduction of the penalty amount by the Commissioner (Appeals). In the appeal of the appellant, the challenge was not only to the penalty but to the entire order including the order of the Commissioner confirming the demand and holding that the freight expenses of the appellant's factory to the buyers factory are includible in the assessable value. The restricted question which was the subject matter of the appeal of the Revenue, under these circumstances, cannot

result in the dismissal of appellant's appeal by application of principle of merger. The said principle on the factual situation herein has no applicability whatsoever. Mr Rawal, the learned Additional Solicitor General very rightly did not support the order on the ground of the applicability of the principle of merger.

5. In the case of Kannyarahmed (supra), the Hon'ble Supreme Court observed that principle of merger would apply on the basis of the facts of the each case. In the present case, it is seen that the Commissioner (Appeals) had not decided the issue against which the appeal filed by the Revenue.

6. Therefore, in the facts and circumstances of the case, the case law relied upon by the ld. Advocate would not be applicable. Accordingly, the impugned order is set aside. The matter is remanded to the Commissioner (Appeals) to decide afresh on merits. The appeal filed by the Revenue is allowed by way of remand.

Order dictated & pronounced in open court on 13.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.