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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/2264/2008 – SM [BR]** Date **15/06/2011**

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. 317 / 2011-SM[BR]** dated 3.5.2011 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, DISTT-BIJNORE (U.P.)

2. Adv. / Consult SHRI AALOK ARORA ADV.
82-MISSION COMPOUND, SAHARANPUR-247001.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 2264 of 2008 (SM)

[Arising out of the Order-in-Appeal No. 93/CE/MRT-II/2008 dated 31.07.2008 passed by The Commissioner (Appeals), Central Excise & Service Tax, Meerut-II]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Meerut-II Appellant

Versus

M/s Dhampur Sugar Mills Ltd. Respondent

Appearance

None – for the respondent.

Ms. Rim Jhim Prasad, Authorized Representative (SDR) – for the appellant.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING / DECISION : 03/05/2011.

Final Order No. 317/2011-SM(BR) Dated : ____________

Per Rakesh Kumar :-

The point of dispute in this case is as to whether the respondent, manufacturer of sugar are eligible for Cenvat Credit in respect of aluminum bars used as carrier of electricity generated by the power turbine alternator and in respect of CRSS coils, shapes & section, channel, angles, plates and SS plate etc. which according to respondent had been used for fabrication of boiling house, pipeline, pan body, mill house EOT crane etc.

1.1. The Assistant Commissioner vide order in original dated 26.12.07 disallowed the Cenvat Credit in respect of these items observing that these items are neither 'inputs' nor capital goods and confirmed the Cenvat Credit demand of Rs.22,617/- in respect of these items along with interest and imposed penalty on the respondent. On appeal to Commissioner(Appeals), the Commissioner (Appeals) vide order in appeal dated 31.07.08 set aside the Assistant Commissioner's order and allowed the Cenvat Credit in respect of these items. It is against this order of the Assistant Commissioner that the Revenue has come in appeal.

2. Though notice regarding hearing of this matter had been sent to the respondent well in time, none representing them appeared at the

time of hearing. In view of this, in accordance with the Rule 21 of CESTAT Procedure Rules, so far as the respondents are concerned, this matter is being decided ex-parte.

2.1 Heard Mrs. Rim Jhim Prasad, Ld. SDR who assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeal. She pleaded that channel, angles, plates and SS plate etc. have been used for fabrication of various structures fixed for the earth and citing the judgement of Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in 2010(253)ELT-440(Trib-LB) pleaded that these items are not eligible for Cenvat credit, that the CRSS coil, shape & section, channel, angles, plates and SS plate etc. have been used in the fabrication of various structures, which are part of the plant, but are not the items of capital goods as defined in Rule 2(a) of Cenvat Credit Rules, 2004, that aluminum bars being covered by Chapter 76 are not covered by the definition of capital goods and hence the same cannot be treated as part of any machinery or accessory, and that the impugned order permitting Cenvat Credit in respect of aluminum bars, CRSS coil, shape & section, channel, angles, plates and SS plate etc. is not correct.

3. I have carefully considered the submissions of the Ld. Departmental Representative and perused the records of the case. So far as aluminum bars are concerned, as mentioned in the order in original, the same are used for transmitting electricity from the power turbine alternator to the machinery. Since aluminum bars are being used as conductors and are essential part, the same, in my view, ~~has~~ have to be treated as parts of the machinery and, hence, the same have to be

treated as capital goods. In respect of aluminum bars, the credit has been correctly allowed.

4. As regards, the CRSS coil, shape & section, channel, angles, plates and SS plate etc., the Cenvat Credit in respect of these items would not be admissible if these items are used as foundation of the machinery or for fabrication of supporting structures or other structures fixed to the earth. From the grounds of appeal, the use of these items is not clear. The Cenvat Credit in respect of these items would be admissible only if it is proved by the manufacturer that the same have been used as input in the manufacture of capital goods and in that case these items would have to be treated as input under the Rule 2(k) of Cenvat Credit Rules, 2004. Since the use of these items has not been discussed in the impugned order, the matter has to be remanded for a de-novo discussion. Accordingly, while the part of the Commissioner (Appeals)'s order permitting Cenvat Credit in respect of aluminum bars is upheld, the part of the order permitting Cenvat Credit in respect of CRSS coil, shape & section, channel, angles, plates and SS plate etc. is set aside and the matters is remanded to the Commissioner (Appeals) for de-novo decision, after ascertaining the use of these items and keeping in view the judgement of the Larger Bench of the Tribunal in the case of Vandana Global Ltd vs. CCE, Raipur (supra). The Revenue's appeal is disposed of as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I