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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/284 /2009 – SM[BR]** Date **06/07/2011**

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

To :
M/S U.G.SUGAR & INDUS. LTD.
SEOHARA, BIJNOR.

M/S U.G.SUGAR & INDUS. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 378 /2011-SM[BR]** dated 15.6.2011 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.KAMALJEET SINGH
J-144, PATEL NAGAR -I,GHAZIABAD.

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. IV

Excise Appeal No. 284 of 2009 (SM)

[Arising out of the Order-in-Appeal No.126-CE/MRT-II/2008, dated 27/10/2008 passed by The Commissioner (Appeals), Customs, Meerut-II.]

For Approval and signature :
Hon'ble Shri M.V.Ravindran, 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?	:	No
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?	:	Seen
4.	Whether order is to be circulated to the Department	:	Yes

UG Sugar & Indus. Ltd. — Appellant
Versus
CCE, Meerut-II — Respondent

Appearance
Shri Kamaljeet Singh, Advocate – for the appellant.
Shri Krishna Pratap Singh, DR – for the respondent.

CORAM : **Hon'ble Shri M.V.Ravindran, Member (Judicial)**

DATE OF HEARING / DEICISION : 15/06/2011.

Final Order No. 378/2011 SM (BR) Dated : ______________

Per M.V.Ravindran:-

This appeal is directed against Order-In-Appeal No.126/CE/MRT-II/2008, dated 27/10/08.

2. The relevant facts for consideration are that appellant are manufacture of Sugar and Molasses falling under Chapter Heading No.1701 7 1703 of the First Schedule of Central Excise Tariff Act, 1985.

3. During the period May, 2006 to December, 2006, the appellant availed and utilized the Cenvat Credit on the goods namely paints/red lead chemical/primer/red oxide and m-seal as inputs. Revenue authorities concluded that appellant are not eligible for Cenvat Credit, hence issued Show Cause Notice dated 13/04/07 to the appellant for denial of Cenvat Credit. Appellant contested the Show Cause Notice issued by the adjudicating authority. Adjudicating authority after considering the factual matrix, dropped the proceedings initiated by the Show Cause Notice. Aggrieved by such an order, the department filed an appeal to the Ld. Commissioner(Appeals). Ld. Commissioner (Appeals) set aside the Order-In-Original and confirmed the demand raised in the Show Cause Notice. Hence this appeal.

4. Ld. Counsel submits that the issue in this case is availing of Cenvat credit on the goods, i.e., paints, used for repair and maintenance of various equipments and the pipes and machines. It is his submission that definition covers their case.

5. Ld. DR on the other hand submits the Commissioner(Appeals) has held that inputs such as paints/red lead chemical/primer/red oxide and m-seal are used for machines and also for repair and

maintenance. It is also his submission that these items out of the definition of inputs.

6. On careful consideration of the submissions by both sides, I find that the issue involved in this case is regarding denial of Cenvat credit to the appellant on the goods which are used as paints.

7. On the factual matrix, there is no dispute that the appellant has received the red lead chemical/primer/red oxide and m-seal in their factory premises. It is also not disputed that these items are used in the factory of the appellant and for painting of various machines and pipelines. These factual findings are recorded by the Ld. Adjudicating authority in paragraph-11 of the Order-In-Original. On the basis of the above factual findings, it is to be seen whether the Cenvat credit is eligible or not. The definition of inputs under Rule 2K of the Cenvat Credit Rules is reproduced below :

> *"all goods except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final product cleared along with the final product, goods used as paint, or as packing material or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production."*

12. As it can be seen from above definition that inputs has got two parts (i) regarding the goods except high speed diesel oil and motor spirit used for manufacture of final product whether directly or

indirectly inclusive accessories of final product cleared along with the final product and (ii) goods used as paint etc. Inclusive part of the definition indicates that goods which are used as paint within the factory of production are eligible for availing Cenvat Credit. As already recorded, there is no dispute that paints on which the credit was availed was received in the factory premises and used by the appellant for painting of pipes and machinery. In view of this, I find that the impugned order is not sustainable, needs to be set aside and I do so. The appeal is allowed.

(Dictated and pronounced in open court.)

(M.V.Ravindran)
Member (Judicial)

RK-I