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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/1005/2009 – SM[BR]** Date **01/09/2011**

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

To :
DHAMPUR SUGAR MILLS LTD.
DHAMPUR DISTT: BIJNOR[U.P.]

DHAMPUR SUGAR MILLS LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 532 /2011-SM[BR]** dated 16.8.2011 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.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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 (Harvana)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Central Excise appeal No. 1005 of 2009-SM

[Arising out of Order-in-Appeal No. 296-CE/MRT-II/2008 dated 30.12.2008 passed by the Commissioner of Central Excise (Appeals-II), Meerut].

Date of Hearing/decision: 16th August, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;

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 should 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 Departmental authorities?	

M/s. Dhampur Sugar Mills Ltd., Appellant

Vs.

CCE, Meerut-II Respondent

Present for the Appellant : Shri Bipin Garg, Adv.
Present for the Respondent : Shri Anil Khanna, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 532/2011 SM (Br) **DATED**

Per D.N. Panda:

Learned Counsel vehemently opposed the adjudication Order on the ground that the same is beyond the scope of show cause notice. Relying on Para 2 of show cause notice it was stated that the said Para did not disclose how Cenvat credit to the extent of Rs. 43,283/- shall not be admissible. It was also argued that the adjudication was time barred. Further submission was that Cenvat credit is admissible to the extent of Rs. 85,972/- in respect of items at Srl. No. 4,5,6,7,8 & 9 of Annxure to show cause notice when these are related to the period after 10.9.2004. His last claim is that Cenvat credit is also permissible in respect of amount of Rs. 10,588/- and Rs. 28,672/-.

2. Learned D.R. supports the appellate order.

3. So far as claim of Rs. 85,972/- is concerned learned Commissioner (Appeals) has just denied the claim writing only two sentences at page 6 of his order without reasoning. To what extent he examined each and every item at Srl. No. 4,5,6,7,8 & 9 of Annexure 'A' to show cause notice is not patent from the order.

4. So far as Cenvat credit of Rs. 43,283/- is concerned, learned Counsel explained that the same is relating to item No. 1 of Annexure 'A' to show cause notice. But learned Commissioner (Appeals) found that the claim has no nexus to the activity carried out to claim set off of Cenvat credit. Today also there is no evidence led to show that claim is

sustainable. Therefore, the appellant looses its claim to the extent of Rs. 32,695/- as held by the Commissioner (Appeals). The appellate authority has also examined the claim of Rs. 3,924/- and passed the appropriate order.

5. For no reason recorded the claim of Rs. 10,588/- has been disallowed. The authority should examine this claim to come to conclusion by a reasoned and speaking order. So far as claim of Rs. 28,672/- is concerned how the appellate authority examined the evidence is not coming out from record. But unfortunately, Revenue is not in appeal on this count.

6. The show cause notice does not invoke ingredients for penalizing the appellant but appellant faced penalty of Rs. 10,000/-. In absence of allegation being made in show cause notice for penalty bringing out the element of Section 11AC of Central Excise Act, 1944 the ill founded show cause notice in so far as it relates to penalty is concerned does not survive. Therefore, no penalty is impossible.

7. For the discussions made above the appellant gets relief of Rs. 28,672/-(except Rs. 2,235/- indicated at page 6 of appellate order) and, the matter is remitted back partly for examination of evidence in respect of claim of Rs. 85,972/- and Rs. 10,588/- only. Cenvat credit of Rs. 32,695/- is not admissible. Thus to the extent indicated above while the appellant gets partial relief the matter also goes back to the

first appellate authority for re-examination and passing reasoned and speaking order.

8. While remanding the matter it is stated that adjudication should be within the scope of show cause notice.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK