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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/2889 - 2890/2010 – SM [BR] E / CO / 199- 200 / 2010-SM[BR]** **Date** **01/09/2011**

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
Respondent

M/S DSM SUGAR,

I am directed to transmit herewith a certified copy of **Final order No. 534 – 535 /2011-SM[BR]** dated 2.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S DSM SUGAR,
ASMOLI,DISTT. MORADABAD
(U.P.)

2. Adv. / Consult SHRI AALOK ARORA ADV.
82, MISSION COMPOUND, SAHARANPUR-1.

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

2. **M/S DSM SUGAR,**
ASMOLI, DISTT. MORADABAD (U.P.)

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 Appeals No. 2889-2990 of 2010 with CO Applications No. 199-200 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 138-139/CE/MRT-II/2010 dated 27/04/2010 passed by The Commissioner (Appeals), Customs & Central Excise, 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 DSM Sugar — Respondent

Appearance

Shri A. Khanna, Authorized Representative (DR) – for the appellant.

Shri Alok Arora, Advocate – for the respondent.

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

DATE OF HEARING : 02/08/2011.

Final Order No. 534-535/2011 SM BR Dated : ____________

Per. Rakesh Kumar :-

In both the cases, the point of dispute is as to whether the welding electrodes, Shapes, Section, Bars and T. Plates etc. used for repair and maintenance of plants and machinery and fabrication of storage tanks are eligible for Cenvat credit or not. This issue in first round of litigation travelled upto the Tribunal and Tribunal vide final order No. 1236-1237/07 – SM (BR) dated 25/07/2007 held that while in respect of welding electrodes, Cenvat credit would not be available, in respect of other items such as bars, shapes, sections, non-sections, angles, T. plates etc. used for fabrication of capital goods, the Cenvat credit would be available and the Tribunal remanded the matter to the original Adjudicating Authority for re-quantifying the Cenvat credit demand. The original Adjudicating Authority. In pursuance of the Tribunal's order quantified the demand, but on appeal to Commissioner (Appeals), the Commissioner (Appeals) by the impugned order dated 27/4/2010 again remanded the matter back to the original Adjudicating Authority on the ground that while re-quantifying the demands, certain items have not been taken considered. Against this order of the Commissioner (Appeals), the Department has filed appeal on the ground that the Commissioner (Appeals)'s order remanding the matter to the original Adjudicating Authority is not correct as the Commissioner (Appeals) has no power to remand.

2. Heard both the sides.

3. Since, the issue regarding the power of remand of the Commissioner (Appeals) is now well settled in view of judgment of Hon'ble Supreme Court in the case of **MIL India Ltd. vs. CCE, Noida** reported in **2007 (210) E.L.T. 188 (S.C.)**, the impugned order is not sustainable. The same is set aside. The matters are remanded to the original Adjudicating Authority for denovo adjudication strictly in accordance with the directions of the Tribunal in its final

order No. 1236-1237/2007 dated 25/07/2007. The Revenue's appeals and cross-objections stand disposed of as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK