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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/166 – 167 /2007 AND E / 126 / 2007-SM[BR] **Date 19/09/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. **M/S THE OUDH SUGAR MILLS LTD**
2. **M/S THE OUDH SUGAR MILLS LTD**
3. **M/S THE OUDH SUGAR MILLS LTD**

HARGAON, SITAPUR(UP)

M/S THE OUDH SUGAR MILLS LTD Appellant

Vs

C.C.E.LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 613 – 615 /2011-SM[BR]** dated 30.8.2011 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.LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. II

Excise Appeal No.166 of 2007,
Excise Appeal No.167 of 2007 and
Excise Appeal No.126 of 2007(SM)

[Arising out of Order-In-Appeal No.131-132/CE/LKO/06, dated 25.08.06 issued by CCE, Lucknow.]

Date of Hearing / Decision : 30.08.2011.

For approval and signature:
Hon'ble Mr. 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?	

Oudh Sugar Mills Ltd. — Appellant
Versus
CCE, Lucknow — Respondent
(Vice-versa)

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

Present for the Appellant - Shri Rajesh Chhibber, Advocate
Present for Respondent - Shri S.K.Panda, JCDR

Final **Order No.** 613-615/2011 SM (Br) **Dated :**

Per D.N. Panda:

In Appeal No.E/166-167 of 2007, the appellant has disputed disallowance of Cenvat Credit on certain inputs which were claimed to be forming part of the capital goods. In Appeal No.126

of 2007, Revenue has come in appeal against waiver of penalty against the appellant. All the three appeals have been arisen out of common cause, those are disposed by common order.

2. Shri Rajesh Chhiber, ld. Counsel submits that at the initial stage of Cenvat Credit Scheme, there were series of confusion among users of inputs as to their classification as capital goods for claiming Cenvat Credit. The goods which are explained in reply to Show Cause Notice (SCN) dt. 26.4.05 were used for either manufacture of capital goods or for manufacture of component and accessories of capital goods. The captively consumed inputs were components in many occasions. Therefore, the appellant cannot be denied the benefit of Cenvat Credit. Similarly, Electrodes used for jointing the structures of components of capital goods shall be eligible for Cenvat Credit. He draws attention to the statement recorded from the Commercial Manager of the appellant and submits that as early as April, 2003, department was made aware in terms of answer to question No.4 about the use of goods for manufacture of capital goods. Therefore, the authorities below erred in holding against the appellant for which the duty and penalty levied shall not sustain.

3. Ld. JCDR on the other hand says that the issue of Cenvat Credit admissibility in respect of disputed items no more remained in dispute in view of the judgement of Apex Court in the case of Saraswati Sugar Mills vs. CCE, Delhi-III reported in

2010(270)ELT465(SC). According to him when the goods of the appellant failed to meet integral test, those were not entitled to Cenvat Credit. Not only use of the input for manufacture of capital goods is to be established with full proof but also it should be established that the input belongs to the classification of the capital goods itself. When the input failed to be capital goods forming an integral part of the capital goods itself or failed to be either component or parts thereof, no credit is admissible. When the goods are used for structures, grant of Cenvat benefit is out of question. He relies on the decision of the Apex Court aforesaid for his submission. Ld. JCDR says that when the appellant relied on the statement of the Commercial Manager recorded on 3.4.03, answer to question No.6 is relevant for Revenue. In that answer, the author of the statement has stated that the items were used for staging and supporting structures of equipments.

4. Heard both sides and perused the records.

5. There is dispute in respect of several items which were summarized in the Show Cause Notice. Soon after the judgement of Apex Court in Saraswati Sugar Mills (supra), it would be proper to send back the matter to the adjudicating authority to examine threadbare each and every items appearing in the annexure of Show Cause Notice about relevancy of inputs for use in manufacture of capital goods, inevitability and indispensability thereof, integral characteristics of inputs as well as classification aspects of the same. Unless these aspects are tested on the basis

of evidence on record, the appellant may be deprived of justice. Law being well settled by Apex Court in the Saraswati Sugar Mills Ltd. (supra) and the issue being of technical nature, it would be proper to conduct a field/technical study for decision.

6. When the proposal is to send back the matter to original authority as stated above, there is no expression of opinion on penalty aspect. The adjudicating authority shall decide such aspect on the merits of the case.

7. The appellant has grievance that Tribunal has allowed Cenvat Credit in its case in the past. While looking to this aspect, the authority has also to look to various judgements of Hon'ble High Courts and Apex Court judgement aforesaid for disposal of appeals.

8. Granting fair opportunity of hearing, the matter should be concluded at the earliest and preferably by end of December, 2011 since the issues are recurring in nature. In the result, all the three appeals are disposed of by way of remand to original authority.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I