

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/693 /2008 – SM[BR]

Date 22/09/2010

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

To :
M/S SHABAD CO-OP. SUGAR MILLS LTD.
MANAGING DIRECTOR, SHAHABAD, DISTT.
KURKSHETRA (HRY)
M/S SHABAD CO-OP. SUGAR MILLS LTD.

Appellant

Vs
Respondent

C.C.E. PANCHKULA

I am directed to transmit herewith a certified copy of Final order No. 991 / 2010-SM[BR] dated 6.9.2010
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. PANCHKULA

SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.

2. Adv. / Consult

MR.O.P. BATHLA

M.D. 57, ELDECO MANSIONZ, SOHNA ROAD, SECTOR 48, GURGAON 122002

3 S.D.R

4 J.C.D.R.

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise, I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

11 Easy Service Tax Online Dot Com Pvt Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New
Delhi - 110070

14 Office Copy

15 Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.693/2008-SM

(Arising out of order in appeal No. 512/KKG/PCK/07 dated 27.12.07
passed by the Commissioner of Central Excise (Appeals), Gurgaon)

Date of Hearing: 6.9.2010

For approval and signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see
Under Rule 27 of the CESTAT (Procedure) Rules, 1982?

Yes

2. Whether it should be released under Rule 27 of the
CESTAT(Procedure) Rules, 1982 for publication
in any authoritative report or not?

Yes

3. Whether Their Lordships wish to see the fair copy
Of the order?

Seen

4. Whether Order is to be circulated to the Departmental
Authorities?

Yes

M/s Shabad Cooperative Sugar Mills Ltd

Appellants

Vs

CCE, Panchkula

Respondent

Appeared for the Appellant: Shri O.P. Batala, Consultant

Appeared for the Respondent: Shri R.K. Gupta, SDR

Coram: **Hon'ble Shri M. Veeraiyan, Member (Technical)**

final ORDER 99/1/2010 SM (B)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner
(Appeals) No. 512/KKG/PCK/07 dated 27.12.2007 by which order of

the original authority dated 28.7.2006 which was in favour of the party, was set aside and duty of Rs.2,10,182/- alongwith interest was confirmed and penalty of equal amount imposed under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act.

2. Heard both sides.

3. The appellants are manufacturer of sugar and molasses. During the period from September, 2005 to October, 2005, the appellants had taken cenvat credit on MS shapes, PMP Plates, MS Channels and MS Plates. The goods were reportedly used in fabrication/manufacture of structures, platform and sheets. A show cause notice dated 8.9.06 was issued on the ground that said items cannot be considered as capital goods and seeking to deny credit and also proposing imposition of penalty. The original authority dropped the proceedings. On appeal by the Department, Commissioner (Appeals) allowed the appeal of the Department and confirmed the demand of duty and imposed penalty as mentioned above.

4. Learned Consultant for the appellants submits that the goods were used for making parts and accessories and replacing old and used parts as part of repair and maintenance of sugar mill/plant. He submits that they are eligible for the credit as parts and components of capital goods. He relies on the following decisions:-

Union of India Vs. Hindustan Zinc Ltd
2007 (214) ELT 510 (Raj)

CCE Salem Vs. India Cements Ltd
2006 (199) ELT 75 (Tri. Chennai)

He also submits that the Hon'ble Supreme Court in the case of CCE Jaipur Vs Rajasthan Spinning & Weaving Mills Ltd reported in 2010 (255) ELT 481 (SC) has clearly held that steel plates and MS channels which are used for fabrication of chimney used in diesel generating sets are eligible for Cenvat credit. Applying the same ratio, he submits that they are eligible for Cenvat credit.

5. The learned DR submits that some of these items are clearly used for fabrication of staging for platform in Boiling house. For items used in such support structure, the credit is not applicable in view of decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd reported in 2010 (253) ELT 440. The learned DR submits that the facts of the case in Rajasthan Spinning & Weaving Mills are entirely different from the facts of the present case.

6. I have carefully considered the submissions from both sides. The decision of the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills cited supra relates to chimney which is an important component of diesel generating set which is capital goods. As diesel generating sets are capital goods, Hon'ble Supreme Court has held that chimney attached to the said capital goods shall be treated as accessories. In view of the above situation, Hon'ble Supreme Court has ruled that MS plates, Channels which were used for fabrication of such chimney would qualify to be capital goods in view of the inclusive definition of the term 'capital goods'.

7. The facts in the case of Vandana Global are different from the facts in the case of Rajasthan Spinning & Weaving Mills. In Vandana Global, the Larger Bench has held that the credit is not available in

respect of steel items and cement which are used for support structure.

8. Coming to the present case, from the order of the Commissioner (Appeals), it is noticed that the specific use of each of the items has not been appreciated in proper prospective. The reason being that the focus of the dispute was different and the same appears to have been decided in the light of the decisions prevalent then. As the decision of the Larger Bench of the Tribunal has been rendered in April, 2010, I deem it appropriate to set aside the order of the authorities below and remand the matter to the original authority for considering the issue afresh in the light of the decision of the Tribunal in the case of Vandana Global cited supra. The appellants are directed to adduce necessary evidence indicating the actual use of the materials. The original authority shall decide the matter afresh after granting opportunity of hearing to the appellants.

9. The appeal is allowed by way of remand.

(order dictated and pronounced in the open Court.)

(M. VEERAIYAN)
Technical Member

MPS*