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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

Date 24/09/2010

Appeal No. E/3764 -3765/ 2006 – SM [BR]

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

To :
M/S U.G.SUGAR & INDUSTRIES LTD
SEOHARA, DISTT- BIJNOR. Appellant
Vs
M/S U.G.SUGAR & INDUSTRIES LTD Respondent

C.C.E.MEERUT II

I am directed to transmit herewith a certified copy of **Final order No**. 1042 – 1043 /2010-SM[BR] dated 15.9.2010 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.MEERUT II
   SAHEED PARK, NEAR ASHOK KI LAT, DELHI ROAD, MEERUT.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI

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 Publictions 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)

3. M/S U.G.SUGAR & INDUSTRIES LTD
   SEOHARA, DISTT- BIJNOR

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing: **15.9.2010**

Excise Appeal No. 3764-3765 of 2006-SM

[Arising out of common Order-in-Appeal No. 161-162-CE/MRT-II/2006 dated 13.9.2006 passed by the Commissioner (Appeals), Central Excise, Meerut]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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.	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 U.G. Sugar & Industries Ltd. Appellant

Vs.

CCE, Meerut-II Respondent

Appearance:

Appeared for the Appellant - Shri Bipin Garg, Advocate

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

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

Final Order No. 1042-1043/2010 SM(BR)

Per M. Veeraiyan:

These two appeals arising out of common Order-in-Appeal No. 161-162-CE/MRT-II/2006 dated 13.9.2006 passed by the Commissioner (Appeals).

2. Heard both sides.

3. In Appeal No. E/3764, the challenge is against the demand of Rs.4,26,832/- confirmed along with interest and a penalty of Rs. 1.00 lakh imposed. The dispute in this case relates to the period September, 2004. In the Appeal No. E/3765, the challenge is against the demand of Rs.4,26,832/- (same as in the previous case) confirmed and penalty of Rs.1.00 lakh imposed. The dispute in this case relates to the period October 2004 to December 2004. The appellants have procured materials such as shape and section, plate, HSMP hot strip plate, channel, PMP plate/mill plate and used in the manufacture and installation of bio-gas plant. In Appeal No. E/3765, an item referred to as gasket involving a disputed amount of Rs.49/- is also involved.

4. Ld. Advocate submits that these items are used in fabrication and erection of bio-gas digester which is effluent treatment plant in the distillery. He submits that the bio-gas plant should be treated as pollution control equipment and consequently as capital goods. Once the bio-gas plant is treated as capital goods, the impugned items should be treated as parts, components or spares of capital goods and, therefore, as capital goods themselves. Alternatively, he submits that if the impugned items cannot be treated as capital goods, they should be treated as input in relation to manufacture of bio-gas plant. Ld. Advocate also submits that no penalty is imposable as the issue involved is one of legal interpretation.

5. Ld. SDR submits that the impugned goods are basically structural materials and are not in a form of components, spares and accessories of the pollution control equipments. These impugned items fall under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985 and have been specifically excluded from the purview of the capital goods. He also draws my attention to the definition of components, spares, accessories as recorded by the order of the Commissioner (Appeals), and submits that the impugned items cannot be treated as components, spares and accessories of capital goods. He submits that credit is not available to structural materials, in the light of the Larger Bench of the Tribunal in the case of **Vandana Global Vs. CCE, Raipur** reported in 2010 (253) ELT 440.

6. I have carefully considered the submissions of both sides and perused the records.

7. The claim by the appellants that bio-gas plant is a pollution control equipment is not supported by any authoritative literature. At any rate, no such literature has been produced in the earlier stage of earlier proceeding and also before me. Undisputedly, as seen from the reply to the show-cause notice filed by the appellant, the impugned items have been used in fabrication and erection of bio-gas plant which cannot be treated as capital goods. Since these items have been used in fabrication of bio-gas plant, treating the impugned items as parts, components, spares or accessories of capital goods does not arise. Therefore, the appellants are not

eligible for the Cenvat credit. However, I agree with the contention of the ld. Advocate that the issue being relating to interpretation of legal provisions, the question of sustaining of penalty does not arise.

8. In view of the above, the appeals are disposed of by upholding the demand of duty along with interest but setting aside the penalty imposed on the appellants.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM