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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/2168/2007 – SM[BR] Date 13/08/2010

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

To :
DHAMPUR SUGAR MILLS LTD.

DHAMPUR (CHEMICAL DIVISION) DISTT. BIJNOR

246761

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.** 869 / 2010 –SM[BR] dated 9.8.2010 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
   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. 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)

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

Date of Hearing/Decision:29.07.2010

Excise Appeal No.2168/07-SM

[Arising out of Order-in-Appeal No.110-CE/MRT-II/07 dated 10.05.2007 passed by the Commissioner (Appeals), Meerut].

Dhampur Sugar Mills Ltd. ...Appellant

Vs.

CCE, Meerut ... Respondent

Present for the Appellant : Shri.Bipin Garg, Advocate
Present for the Respondent: Shri.R.K.Gupta, DR

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 869/2010 SM (BR) **DATED:29.07.2010**

PER: D.N.PANDA

The limited prayer of the appellant in this case is that it should not be denied credit of taxes paid in respect of goods transport agency service provided to the appellant. According to the ld. Counsel, taxes are deposited through challans because the rule has not mentioned that the challan showing deposit of the service tax paid on GTA services shall not be proof for the purpose of cenvat credit. Therefore, this appellant should not be denied credit there of.

2. Ld. DR does not dispute that the service tax in respect of GTA services was paid by the appellant. Both parties also relied on TR 6 challans for claim of each other. Prayer of Shri

Gupta, ld. DR is that in absence of rule, allowing TR 6 challan as the basis for granting credit, proper order was passed by the Appellate Authority below to deny cenvat credit.

3. Heard both sides and perused the records.

4. There is no dispute of either side that TR 6 challan was the prescribed basis to allow cenvat credit w.e.f. 16.6.05 while the present case is prior to that. In absence of any other evidence prescribed by law to claim taxes paid in respect of GTA services other than through TR 6 challans the claim of the appellant shall not be denied. It is the only proof of deposit of tax that is in question in this appeal to support the claim. When the basic rule of cenvat credit is to avoid cascading effect, procedure should not be bottleneck to deny substantial right of the appellant. Right to cenvat credit in the present case is not disputed. But procedure has become an embargo.

5. Following the ratio laid down by the Hon'ble Supreme Court in the case of Sambaji Vs. Ganga Bai - 2009 240 ELT 161 (S.C.) it can be said that all the rules of procedure are the handmaids of justice. Procedure should not be a tyrant but a servant of law. It shall neither be an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. It has been held in Sangram Singh vs. Election Tribunal, Kotah - AIR 1955 SC 425 that it is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a

thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

6. To do justice, it has therefore become necessary that procedure should not come on way in the present appeal, when the right has accrued undisputedly. Accordingly, appellant is entitled to the credit claimed through TR-6 challan adduced before the authorities below.

7. Appeal is allowed setting aside the impugned order.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita