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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 **07/09/2011**

Appeal No. **E/1086/2009 – SM[BR]**

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

To :
M/S KISAN SAHKARI CHINNI MILLS LTD.
SNEH ROAD, NAJIBABAD, DISTT. BIJNOR (U.P.)

Appellant

M/S KISAN SAHKARI CHINNI MILLS LTD.

Vs
Respondent

C.C.E. MEERUT II

I am directed to transmit herewith a certified copy of **Final order No. 573 / 2011-SM[BR]** dated 23.8.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.VIKRANT KACKRIA
509, SEC-7,PANCHKULA, HARYANA

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)

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

Excise Appeal No.E/1086/09-SM

[Arising out of Order-in-Appeal No. 143/CE/MRT-II/2008 dated 28.11.2008 passed by the Commissioner (Appeals), Central Excise, Meerut-II].

M/s.Kisan Sahkari Chinni Mills Ltd. ...Appellant

Vs.

CCE, Meerut-II ... Respondent

Present for the Appellant : Shri Vikrant Kakria, Advocate
Present for the Respondent:Shri.S.K. Panda,J.C.D.R.

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

Date of Hearing/Decision:23.08.2011

Final **ORDER NO.** 573/2011 SM BD **DATED:**________

PER: D.N.PANDA

Ld. Counsel submits that on the basis of proper evidence, cenvat credit was claimed. The original invoices could not be produced at the time of adjudication hearing. Revenue also failed to bring out about the basis of allegation. Under such confusion the appellant has been denied cenvat credit on input. The service being received after 10.9.04 (when set off of service tax relating to input service came into force) the appellant cannot be denied the benefit, since that is evident from original invoice available. The Original invoice is produced today by ld. Counsel Shri Vikrant Karkria.

2. Ld. JCDR says that service being received before 10.9.04, the appellant has no claim under law. To resolve the dispute of both sides, it is necessary to thoroughly examine the original invoice produced today by the appellant with reference to the service in question whether provided after 10.9.04 or before that. It would be proper for the adjudicating authority to thoroughly examine the record of service provider and recipient to come to a fair conclusion. So also that authority can examine whether the input service has been used in providing taxable output service or in relation to that or used in manufacture o. in relation to manufacture. Since all these aspects require a thorough scrutiny, the matter is remitted to the original authority before whom the appellant shall have opportunity to adduce evidence in support to its claim and argue the matter. The authority examining the entire plea of the appellant and evidence shall pass a reasoned and speaking order.

3. In the result, the appeal is disposed by way of remand.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita