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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/462 /2009 – SM [BR]** Date **30/06/2011**

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
M/S U.P.STATE SUGAR CORPORATION LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 355 / 2011 –SM[BR]** dated 14.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S U.P.STATE SUGAR CORPORATION LTD.
SISWA BAZAR,DISTT
MAHRAJGANJ, (U.P.)

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
COURT NO. III

Excise Appeal No. 462 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 114-CE/ALLD/08 dated 27.11.2008 passed by the Commissioner of Central Excise (Appeals), Allahabad]

For approval and signature:

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

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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

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Commissioner of Central Excise. Allahabad — Appellants

Vs.

M/s. U.P. State Sugar Corporation Ltd. (presently known as Indian Potash Ltd.) — Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
Shri Mayank Garg, Advocate for the Respondent

Final

Date of Hearing/decision : 14.6.2011

ORAL ORDER NO. 355/2011 SM (BR)

Per M. Veeraiyan:

The appeal by the department is against the order of the Commissioner (Appeals) No. 114-CE/ALLD/08 dated 27.11.08.

2. Heard both sides.

3. The respondents cleared certain waste and scrap of parts of machinery during the period September, 2005 to December, 2006 valued at Rs.27,10,821/-. A show cause notice dated 4.4.2007 was issued alleging that the waste and scrap generated out of capital goods (on which modvat has been taken) have been cleared in violation of Rule 4, 6, 8, 11 and 12 of the Central Excise Rules, 2002. The show cause notice also alleges violation of Rule 5A of the Cenvat Credit Rules, 2004. In pursuance of Show Cause Notice, original authority confirmed the duty demand of Rs.4,42,406/- under Section 11A of the Central Excise Act. He ordered recovery of interest. He also imposed equal amount of penalty under Section 11AC.

4. On appeal by the party, Commissioner (Appeals) has set aside the order of the original authority.

5. Learned DR reiterates the reasoning and findings of the original authority and the grounds of appeal.

6. Learned advocate for the respondents strongly supports the order of the Commissioner (Appeals).

7. I have carefully considered the submissions and perused the records. Show cause notice invoked Rules 4, 6, 8, 11 and 12 of Central Excise Rules, which relate to excisable goods manufactured by the

assessee. At the same time, the show cause notice also alleges that the respondents have cleared waste and scrap arising from capital goods on which modvat credit has been taken. The respondents contested the show cause notice and stated that scrap or waste have arisen out of capital goods received minimum 15 years back i.e. prior to 1994 when the credit on capital goods were extended. Original authority held that the burden of proof that the goods were received prior to 1994 is on the assessee. At the same time, he has confirmed the duty under section 11A and imposed penalty under section 11AC of the Central Excise Act. In other words, he has held that the assessee has cleared the waste and scrap as excisable goods. Commissioner (Appeals) held that there is no finding that these goods are manufactured and accepted the claim by the respondents that they have arisen out of capital goods on which modvat credit was not taken. The learned DR relied on the decision of the Court in the case of Birla Corpn. Ltd. vs. CCE, Jaipur reported in [2011 (266) ELT 211 (Tri-Del)] particularly para 11 of the order. On perusal of said decision, it is noticed that the Tribunal has not held that scrap obtained by dismantling old/ damaged machinery as excisable goods. At the same time it also held that in the case of repair and maintenance, if any goods are used for manufacture of parts and the parts are replaced, such parts are excisable goods. In any case, presently we are not dealing with any parts which are replaced, as the duty demand is relating to waste and scrap sold by the respondents.

Therefore, the said decision does not support the view of the department.

8. The goods are admitted to be waste and scrap. Undisputedly the waste and scrap sold by the respondents have arisen out of capital goods and the appellant's claim was that such capital goods were procured prior to introduction of Modvat credit on capital goods. Since the original authority has chosen to confirm the demand treating the goods as excisable goods, clearly the order of the original authority was not sustainable. In view of the above, the order of the Commissioner (Appeals) setting aside the order of the original authority does not call for any interference.

9. The appal of the department is therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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