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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/2690/2007 – SM[BR]** Date **30/06/2011**

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

To :
M/S KISAN SAHKARI CHINNI MILLS LTD.
NANAUTA ,SAHARANPUR

M/S KISAN SAHKARI CHINNI MILLS LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 356 / 2011-SM[BR]** dated 23.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Excise Appeal No.2690 of 2007

(Arsing out of Order-in-Appeal No.162/CE/MRT-I/2007 dated 22.8.2007 passed by the CCE (A), Meerut-I)

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?	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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?	No

M/s.Kisan Sahkari Chini Mills Ltd. — Appellants

Vs.

CCE, Meerut-1 — Respondent

Present for the Appellant: Shri Vikrant Kackria, Advocate
Present for the Respondent: Shri K.P.Singh, SDR

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

Date of Hearing: 23.06.2011
Date of Decision: 23.06.2011

Final **ORDER NO.** 356/2011 SM (BR)

PER: M.VEERAIYAN

This is an appeal against the order of the Commissioner (Appeals) No.162/CE/MRT-I/2007 dated 22.8.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant is a manufacturer of sugar and molasses. During the period from October, 1999 to November, 1999, they received the staging/structure material and availed the cenvat credit. The original authority in pursuance of the remand order of Tribunal in the de novo proceeding undertaken vide his order dated 20.9.2006 denied the credit on these goods which are claimed as capital goods by the appellants. The Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that these staging/structures materials are meant to support the cane unloader, rake type inter carrier, baggase carrier, rake carrier, cross baggase carrier, baggase elevator, mill plated form and cane carrier. Therefore, they are eligible for cenvat credit. He also submits that the decision of the Tribunal in their own case relied upon by the Commissioner (Appeals) related to steel plate bars which were not considered as components, equipments, spares or accessories of the goods in terms of Rule 57Q(1). The said decision should not be applied to the facts of the present case as the goods involved in the present case are structures which have been brought on payment of duty under chapter heading 7308. He also submits that the decision of the Larger Bench of Tribunal in the case of Vandanal Global Ltd. vs. CCE, Raipur reported in 2010 (253) ELT 440 is denying the cenvat credit in relation to the items used in structures which are embedded to the earth. The original authority and the Commissioner (Appeals) have not been gone into this factual

aspecst as to whether the structures are embedded to the earth as the scope of the dispute was different. Therefore, he seeks remand of the matter once again to the original authority for fresh consideration.

5. The learned SDR also seeks remand to the original authority to consider the eligibility of cenvat credit in the light of the decision of the Larger Bench of Tribunal in the case of Vandana Global Ltd..

6. In view of the above, I set aside the order of the lower authorities and remand the matter once again to the original authority for fresh consideration in the light of the decision of the Larger Bench of Tribunal in the case of Vandana Global Ltd. cited supra and after granting reasonable opportunity of hearing to the appellants.

7. The appeal is allowed by way of remand as above. (Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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