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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2700/2010 - EX[DB]
E/S/2448/2010

Date **01/12/2011**

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

To :
M/S DALMIA CHINI MILLS
(PROP. M/S DALMIA CEMENT (BHARAT) LTD.),
HANSALAYA, 11 & 12TH FLOOR, 15, BARAKHAMBA
ROAD, NEW DELHI-110001.

M/S DALMIA CHINI MILLS Appellant

Vs

C.E.E & S.T (LTU) Respondent

Stay order No. 1333/2011

I am directed to transmit herewith a certified copy of **Final order No.** 995/2011 **EX[DB]** dated 21.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E & S.T (LTU)
NBCC PLAZA, PUSHP VIHAR,
SECTOR-III, SAKET, NEW DELHI-
110017

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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 (Harvana)
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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

4

E/S 248/10 in E/Appeal No.2700/2010

(Arising out of order in original No. 9/Comm/10 dated 7.5.10 passed by the Commissioner of Customs & Central Excise, New Delhi)

Date of Hearing:21.11.2011

For Approval and signature:

Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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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? No

2. Whether it would 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 Department Authorities? Yes

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M/s Dalmia Chini Mills — Appellants

Vs

CCE, New Delhi — Respondent

Appeared for the Appellant: Shri B.L. Narasimhan, Advocate
Appeared for the Respondent: Shri Sunil Kumar, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No 1333/2011-EX
FINAL ORDER No. 995/2011-EX

Per Archana Wadhwa:

Duty of Rs. 11,11,22,218/- stands confirmed against appellants along with the imposition of penalty of identical amount. The said demand stands confirmed in terms of proviso of Rule 6(3)(b) as 10% of the cost the electricity, manufactured out of common modvatable inputs but cleared free of duty to ~~their~~ power grid.

2. Revenue's contention is in as much, the appellant has not maintained separate account for the common inputs being used in the manufacture of dutiable as also exempted final products, they are required to pay 10% of the value of the exempted final product i.e. electricity.

3. The learned Advocate appearing for the appellants submits that the total modvat credit involved in such inputs ~~is~~ used in the manufacture by electricity is to the extent of Rs. 54,16,969/- which also stands reversed by them along with the interest of Rs. 28,53,334/. He further submits that in view of the retrospective amendment to the proviso of Rule 6 enabling an assessee to debit the credit so availed by them, they have already moved an application to the Commissioner on 4.11.2010, giving details of such reversal. He further submits that the said application is pending before the Commissioner. Accordingly, he prays ~~for~~ that the impugned order be set aside and the matter be remanded for fresh decision along with application made by them.

4. The learned DR has no objection.

5. In view of the above, after dispensing with the condition of pre-deposit, ~~we~~ set aside the impugned order and remand the matter to the Commissioner for fresh decision along with application dated 4.11.2010 made by the appellants. The stay application as also appeal is disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)