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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/1538/2011 - EX[DB] Date **03/02/2012**
E/S/2020/2011-EX

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

To :
M/S DSCL SUGAR-AJBAPUR
A UNIT OF DCM SHRIRAM CONSOLIDATED LTD.
AJABAPUR, PO MULLAPUR, LAKHIMPUR KHERI(UP)
M/S DSCL SUGAR-AJBAPUR Appellant

Vs

C.E. LUCKNOW Respondent

STAY ORDER NO. 146/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/68 2012 EX[DB]** dated 31-1-12 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

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-3
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 (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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Excise Stay Application No.2020 of 2011
Excise Appeal No.1538 of 2011

[Arising out of Order-In-Original No.56/Comm/LKI/CS/2010-11, dated 28.02.2011 issued by CCE, Lucknow]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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?	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. DSCL Sugar Ajbapur — Appellants
Vs.
Commissioner of Central Excise Lucknow — Respondent

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

Appearance:
Sh. B.L.Narsimhan, Adv. & Sh. Hemant Bajaj, Adv. for the Appellants
Shri R.K.Varma, DR for the Respondent

Date of Hearing/decision : 19.01.2012

STAY ORDER No. 146/2012-EX (BR)
FINAL **ORDER NO . A/68/2012-EX(BR) DATED** ________

Per Ms. Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty and penalty of identical amount, we proceed to decide the appeal itself with the consent of both the sides in as much as the issue stands in a narrow compass.

2. Ld. Advocate appearing for the appellants submits that Commissioner(Appeals) has passed the impugned order against the appellant in respect of exempted electricity @ 10% of the

value of the electricity on the ground that the appellants have not maintained separate records in respect of Cenvat Credit on the common inputs used in the manufacture of dutiable as well as used in the final product. According to the appellants, they have reversed the Modvat Credit relatively used for exempted final product. Primarily the dispute relates to quantum of said reversal made by the appellants.

3. Both sides agree that in terms of law declared by Hon'ble High Court as also the Section 73 of Finance Act, 2010, such reversal of credit was sufficient. As such we find that there is no dispute on the legal issue that such reversal ~~was not called for the~~ is good enough and will not warrant confirmation of an amount of 10% of the value of exempted goods. Reference in this regard can be made to Hon'ble Gujarat High Court's decision in the case of Maize Products reported in 2009(234)ELT431(Guj.). In as much as the issue relates to the correct quantification of reversal of credit which can only be decided at the original adjudicating authority level, we set aside the impugned order and remand the matter to Commissioner(Appeals) for quantifying the credit amount required to be reversed. Needless to say that the appellants would be given an opportunity to present their case. Stay petition as also the appeal gets disposed of in above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I