

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

Appeal No. E/2618/2008 - EX[DB]
E/COD/68/2009,E/CO/84/2009

Date **05/06/2012**

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011
C.C.E BHOPAL

Appellant

Vs
Respondent

M/S MAHAKAUSHAL SUGAR & POWER INDUSTRIES LTD.

MISC ORDER NO. 646/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/651** **2012 EX[DB]** dated 31-5-12
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S MAHAKAUSHAL SUGAR & POWER INDUSTRIES LTD.
GRAM BACHAI,
DISTRICT. NARSINGHPUR (M.P.)

2. Adv. / Consult *SH. Z. U. ALVI, ADV,*
D-8, B.D.A. COLONY
KOH-E-FIZA, BHOPAL - 462001

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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

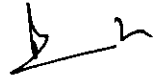
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

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 & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. I

DATE OF HEARING/DECISION : 31/05/2012.

**Excise COD Application No. 68 of 2009 and CO No. 84 of
2009 in Appeal No. 2618 of 2008**

[Arising out of the Order-in-Appeal No. 175/BPL/2008 dated
06/11/2008 passed by The Commissioner (Appeals), Customs &
Central Excise, Bhopal.]

**Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, 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?
 2. Whether it would be released under Rule 27 of :
the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
 3. Whether their Lordships wish to see the fair :
copy of the order?
 4. Whether order is to be circulated to the :
Department Authorities?
-

CCE, Bhopal

Appellant

Versus

M/s Mahakaushal Sugar & Power Industries Ltd.

Respondent

Appearance

Shri Nagesh Pathak, Authorized Representative (DR) – for the
Appellant.

None – for the Respondent.

**CORAM : Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)**

MISC Order No. 646/2012-EX (BR)
FINAL Order No. A/651/2012-EX (BR)

Shri Justice Ajit Bharihoke :-

By this order, we propose to dispose the department's appeal No. E/2618/08 as also the cross objection No. 84/2009 filed by the respondent M/s Mahakaushal Sugar & Power Industries Ltd., Gram Bachai, District Narsinghpur (M.P.).

2. Briefly put the relevant facts for the disposal of appeal and cross objection are that appellant is engaged in manufacture of sugar and molasses falling under Chapter 17 of the Central Excise Tariff Act, 1985, the appellant was availing the facility of Cenvat credit on inputs as well as the capital goods. During the period from November 2006 to August 2006, the appellant claim Cenvat credit amounting to Rs. 12,90,720/- on iron and steel items like angle, iron, channels, joists, bar, plate, sheet and coil falling under Chapter 72 under the category of capital goods in the Central Excise Tariff Act. Department was of the view that appellants have wrongly availed Cenvat credit on those items, which were not used in or in relation to manufacture of the final product accordingly the respondent sugar mill was served with show cause notice raising demand of Rs. 12,90,720/- alongwith interest. The respondent was called upon to show cause as to why the penalty may not be imposed on respondent.

3. The respondent contested the show cause notice claiming that the goods, in question, were inputs and were used by him in or in relation to manufacture of the final product as also for repair and maintenance of the storage tanks. The defence taken by the respondent did not find favour with the Jurisdictional Additional Commissioner who disallowed the Cenvat credit and confirmed the demand of Rs. 12,90,720/- with interest and also imposed equal amount of penalty.

4. The respondent being aggrieved of the order-in-original preferred an appeal before the Commissioner (Appeals), who after hearing the parties accepted the plea of the respondent in respect of some of those articles and partially accepted the appeal by modifying the order-in-original to the extent that credit was held to be admissible as capital goods.

5. Feeling aggrieved by the order of Commissioner (Appeals), the department has preferred instant appeal. In the instant appeal, the respondent has filed the cross-objection application claiming that the Commissioner (Appeals) was not right in partially rejecting the appeal of the respondent. Alongwith the Cross Objection, the respondent filed miscellaneous application for condonation of delay of 11 days in filing of the cross objection.

6. No one has appeared on behalf of the respondent despite repeated calls, therefore, we are constrained to hear the appeal ex-parte.

7. Shri Nagesh Pathak, learned AR for the department has taken us through the order in original as also the impugned order and submitted that the impugned order is liable to be set aside for the reason that it is a non speaking. Expanding on the above argument, Shri Nagesh Pathak submitted that perusal of the order in original would show that the adjudicating authority disallowed the cenvat credit availed by the respondent for the reason that the respondent assessee had failed to produce convincing and conclusive evidence to show that inputs/capital goods regarding which cenvat credit was claimed were actually used for or in relation to manufacture of final products or for maintenance of repair of storage tank or raising of height of chimney and the Commissioner (Appeals) while disagreeing with the finding of the adjudicating authority has failed to give any reason or basis for his disagreement. On this count alone, the impugned order is liable to be set aside. Learned AR further submits that otherwise also the impugned order of the Commissioner (Appeals) is against principle of law laid down by the Larger Bench of this Tribunal in the matter of **Vandana Global Ltd. vs. CCE, Raipur** reported in **2010 (253) E.L.T. 440 (Tri. – LB)**.

8. We have considered the submissions made by learned AR for the department and perused the records. On perusal of the order in original, it is seen that cenvat credit was disallowed to the respondent assessee by the adjudicating authority on the ground that the assessee had failed to produce conclusive and convincing evidence that the specific items in respect of which cenvat credit was claimed had actually been used for the claim purpose.

9. The Commissioner (Appeals) has differed with the aforesaid finding of the adjudicating authority in para 5 of the impugned order which is reproduced thus:

"I have carefully gone through the grounds of appeals, submissions made in the personal hearing and other evidence available on records. The matter to be decided in this appeal is whether the Cenvat Credit available on Iron & Steel items plate angle, channel, Joist, Bar, Sheet, and coils falling under chapter 72 under the category of capital goods or not. The Appellant has taken credit on the above items as capital goods a show cause notice has been issued to the appellant on the grounds that these goods did not appear to fall under the capital goods. The adjudicating authority had held that the impugned goods, that there exists no conclusive and convincing evidence on record that specific list of items under dispute have been aurally utilised for the claimed purpose. The appellant did not disclose as to how these items fall under the purview of capital goods, the items are not by themselves machining items capable of producing goods. The appellant has also submitted a certificate from the Chartered

Engineer regarding the use of the items in question which also says that the items are used for increasing the Height of Chimney alongwith Cement."

10. On reading of the above, we find that though the Commissioner (Appeals) has disagreed with the finding of the adjudicating disallowed cenvat credit to the respondent, he has failed to give any reason or basis for said disagreement. Thus, in our view, the impugned order is non speaking order passed arbitrarily by the Commissioner (Appeals) without any reference to the evidence. Further, we may note although the Commissioner (Appeals) has allowed Cenvat credit on some of the items, in question, yet he has not identified those items and proceeded to allow the appeal partly by modifying the order of Adjudicating Authority to the extent ~~that~~ credit is admissible on some of the goods as capital goods. This order in our considered view is incomplete order and leaves a scope for re-adjudication as to which of the items are eligible for Cenvat credit as capital goods.

11. Thus, in our view, the impugned order being incomplete as well as non-speaking order is not sustainable in law. Accordingly, the appeal filed by the department is accepted. The order of Commissioner (Appeals) is set aside and the matter is remanded back to the Commissioner (Appeals) for deciding the matter afresh after giving hearing to the parties.

12. Since, the matter has been remanded back to Commissioner (Appeals), for de novo hearing of the appeal, cross objection filed by the respondent as well as application for condonation of delay in filing the Cross Objection are dismissed as infructuous. The respondent would get opportunity to make a submission before the Commissioner (Appeals).

13. The appeal as well as Cross Objection and miscellaneous application are disposed of in above terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK