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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/2817/2009 - EX[DB]    Date 13/06/2012

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

**M/S NARMADA SUGAR MILLS PVT. LTD.**    Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/676** **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 NARMADA SUGAR MILLS PVT. LTD.**
POST-SALICHAUKA,TEH.-
GADARWARA,DISTT.
NARSINGHPUR (M.P.)

2. Adv. / Consult SH. PRABHAT KUMAR, ADV,
B-[illegible] (BASEMENT)
SARVODAYA ENCLAVE
N. DELHI
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 & 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 Appeal No. 2817 of 2009**

[Arising out of the Order-in-Appeal No. 257/BPL/2009 dated 23/06/2009 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 Narmada Sugar Mills Pvt. Ltd. — Respondent

**Appearance**

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

Shri Prabhat Kumar, Advocate – for the Respondent.

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

FINAL Order No. A/676/2012-EX(BR)

**Per. Shri Rakesh Kumar :-**

The respondent are manufacturers of sugar and molasses. The point of dispute in this case is as to whether they are eligible for Cenvat credit of Rs. 12,59,266/- availed by them in respect of MS Angles, Channels, Bars, Sheets, Plates etc. [illegible] during March 2007 to August 2007. The respondent's plea is that these items had been used either for fabrication of certain items of capital goods or for repair and maintenance of the capital goods. However, the department not accepting their plea, issued a show cause notice for disallowing this credit and its recovery alongwith interest and also for imposition of penalty on them under the provisions of Cenvat Credit Rules, 2004. The show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 31/12/08 by which the Cenvat credit demand as made in the show cause notice was confirmed alongwith interest and beside this, penalty of equal amount was imposed on the respondent. On appeal the Commissioner (Appeals) vide order-in-appeal dated 23/06/09 set aside the order of the Additional Commissioner accepting their plea that the items, in question, have been used for fabrication of new machinery and repair and maintenance of the existing machinery and, therefore, same are eligible for Cenvat credit as capital goods in view of judgment of Hon'ble Rajasthan High Court in the case of **Union of India vs. Hindustan Zinc Ltd.** reported in **2007 (214) E.L.T. 510 (Raj.)**. Against this order of the Commissioner (Appeals), this appeal has been filed by the Revenue mainly on the ground that the burden of proving that the items, in question, had been used for repair and maintenance and fabrication of new machinery is on the respondent and that in this regard no evidence has been produced by them.

2. Heard both the sides.

3. Shri Nagesh Pathak, the learned Senior Departmental Representative, assailed the impugned order by reiterating the grounds of appeal in it and emphasised that while the respondent plead that the items, in question, had been used for fabrication of certain items of machinery and for repair and maintenance for the existing plant and machinery no evidence in this regard has been produced by the respondent. He, therefore, pleaded that the impugned order is not correct.

4. Shri Prabhat Kumar, Advocate, the learned Counsel for the respondent, submits that the items, in question, have been used either for fabrication of the certain items of capital goods for used in the factory or for repair and maintenance, and that none of these items had been used for any supporting structure or in any structures fixed to the earth. He, therefore, pleaded that the Commissioner (Appeals) has correctly allowed their appeal and has correctly permitted the Cenvat credit in respect of these items.

5. We have carefully considered the submissions from both the sides and perused the records.

6. The real controversy in this case is whether the inputs/ capital goods, in question were actually used for in or in relation to the manufacture of final product. Perusal of order-in-original would show that the Adjudicating Authority has disallowed the Cenvat credit claim of the appellant only for the reason that the appellant had failed to lead any evidence in respect of the subject goods having been put to use for in or in relation to manufacture of capital goods or for their repair/maintenance. The Commissioner (Appeals) has dealt with this aspect in para 7 and 8 of the impugned order which are reproduced thus :-

> "7. The Additional Commissioner, after considering the case laws referred by the Appellant, has come to a finding that Cenvat credit was admissible on the said iron and steel items subject to production of evidence that these were used for the purposes integrally connected with the manufacture of the final products, which has not been done by the appellant. I find that during the original proceedings and also before Superintendent (Audit), the appellant has submitted vide Annexure A/letter dated 03/10/2007 a list of plant and machinery manufactured and also details of repairs of existing plant and machinery with quantity of impugned iron and steel items used in such manufacture/repair of machineries. A request was also made to verify the details furnished. This disclosure does not find any mention either in the show cause notice or in the order-in-original. It appears that the Appellant's version of use of impugned iron and steel items in the manufacture of new plant and machinery and for repair of existing plant and machinery has not been taken cognizance of without offer of any observation and a unilateral conclusion has been arrived that the items have not been used, as

contended by the Appellant. There is no material in the case which proves or even remotely indicates that the impugned items have been used otherwise than for the purposes claimed by the Appellant. In the absence of any such material, the claim of the Appellant concerning the use of the materials have to be considered as genuine.

8. As per the details furnished by the Appellant, the new machinery manufactured consisted of Pan, semikestner, crystallizer, vertical crystallizer, body, vapour pipe, condensate water tank, feed/hotwater storage tank, molasses supply tank, pugmills, dorr and crane. Further, the repairing of existing plant and machinery was undertaken on body of pan, centrifugal machine body, R.B.C., Mill Inter Carrier, Cane carrier, Boiler and ducting of boiler."

7. On reading of above, it transpires that Commissioner (Appeals) decided to allow Cenvat credit because of one letter dated 3rd October 2007 addressed by the assessee to Superintendent (Audit) detailing the list of plant and machinery manufactured and also the items used for repair and maintenance of existing plant and machinery with the quantity used in this regard. It was written in the letter that the department may verify the details furnished. Commissioner (Appeals) has observed that show cause notice did not mention about the letter and ultimately he based the finding on the fact that no material was placed by the department on record which could prove or remotely indicate that the impugned items have been used otherwise than the purpose claimed by the appellant. Commissioner (Appeals), however, has not discussed the actual

user of the items, in question, to come to the conclusion whether or not those items would fall within the definition of capital goods or inputs. Even the Jurisdictional Authority has not taken note of the letter dated 3rd October 2007 addressed to the Superintendent (Audit). From this, it appears that both the Adjudicating Authority as also the Appellate Authority had gone on to decide the matter regarding admissibility Cenvat credit to the assessee without referring to the evidence and without looking into the actual user to which the goods, in question, was put in. Thus, we are of the view that the orders being non-speaking and passed on unwarranted assumption cannot be sustained. Accordingly, we hereby set aside the impugned order and remand the matter back to the Adjudicating Authority for denovo decision based upon the evidence after hearing the respondent with regard to their claim regarding use of the items, in question, for fabrication of capital goods or for repair or maintenance of the machinery. The appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

**(Justice Ajit Bharihoke)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

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