FAX : 011-26108426

REGISTERED / AD

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

Dated: **27/11/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1322/2012-EX[DB]**, Stay Order No. **SO/1910/2012** and dated **16/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	E/Stay/3221/2012	E/2482/2012	**Basti Sugar Mills Co Ltd** P.o- Sugar Factory, Distt Basti(up) 272003

Name and Address of Respondent

2 **C.C. & C.E. & S.T.-Allahabad**
38...M G MARG...
CIVIL LINES,
ALLAHABAD,
UTTAR PRADESH
211001

--

Copy To
3Advocate(s) / Consultant(s):

Pradeep Kumar Mittal Adv.
171-CHITRA VIHAR,
DELHI
110092

--

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay application No.3221 of 2012 in Excise Appeal No.2482 of 2012

(Arising out of Order-in-Appeal No.59/CE/ALLD/2012 dt.29.05.2012 passed by the CCE(A), Allahabad)

Date of Hearing/Decision: 16.11.2012

Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.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 should 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 Departmental authorities?	

Basti Sugar Mills Co.Ltd. — Appellants

Vs.

CCE, Allahabad — Respondent

Present: Shri P.K.Mittal, Advocate for the Appellant
Present Shri M.S.Negi, DR for the department

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

STAY order No. 1910/2012-Ex (BR)
FINAL Order No. A/1322/2012-Ex (BR)

Per: Rakesh Kumar

The appellant are manufacturer of sugar and molasses. During the period from November, 2006 to July, 2007, they took credit of Rs.23,28,062/- in respect of steel items M.S.plates, angles, channels, etc. The department being of the view that these items are neither covered by the definition of 'input' as given in rule 2(k) nor are covered by the definition of 'capital goods' as given in rule 2(a), issued a show cause notice dated 16.9.2010 for denial of cenvat credit in respect of these items, its recovery alongwith interest and also imposition of penalty. The appellant filed reply to the show cause notice dated 25.08.2010 and additional submission dated 17.8.2011 explaining the use of each and every items in respect of which cenvat credit had been taken. Show cause notice was adjudicated by the joint Commissioner vide order in original dated 30.11.2011 by which, he denied the credit in respect of above mentioned items and confirmed the demand alongwith interest and imposed penalty of equal amount on the appellant. In the course of hearing before the Joint Commissioner, the appellant pointed out to their replies to the show cause notice explaining the use of the each and every items but the same was not considered. On appeal to the Commissioner (Appeals) against the joint Commissioner, the same was upheld by vide order in appeal dated 29.5.2012 against which this appeal has been filed alongwith stay application.

2. Heard both sides.

3. Though this matter is listed for hearing of the stay application, after hearing the same for some time, we are of the view that this can be taken up for final disposal. Accordingly, requirement of pre-deposit is waived and with the consent of both sides, the matter is heard for final disposal.

4. Shri P.K.Mittal, Advocate, the learned Counsel for the appellant, pleaded that as is very clear ~~that~~ in the orders of the Joint Commissioner and of CCE(Appeals), the adjudicating authority as well as The Commissioner (Appeals) have blindly followed the judgement of CESTAT in the matter of **Vandana Global Ltd. vs. CCE, Raipur-2010 (253) ELT 440** without even having a look into the user of the goods in respect of which the cenvat credit had been taken. In

support of his contention, he has drawn our attention to the order in original wherein while dealing with the case of the Appellant Joint Commissioner concerned has observed as under:-

> *"The party also submitted the additional submission dated 17.8.2011 at the time of personal hearing on 02.09.2011, wherein the party submitted that copy of photograph and drawings of equipments fabricated for and used in the process of manufacture of final product i.e. Sugar & Molasses, copy of gauge chart of new molasses storage tank (No.2 & 3) duty verified by state excise authority, copy of fixed asset ledger of various machinery was submitted."*

Learned Counsel for the appellant submits that it is obvious that the details of use of each and every items against which credit was availed, was provided to the adjudicating authority alongwith photographs and drawings of equipments manufactured from those items and despite that, the adjudicating authority has not verified those facts in order to come to conclusion whether or not credit was admissible to the appellant. Shri P.K.Mittal, learned Counsel, further submits that even Commissioner (Appeals) has not undertaken the aforesaid exercise to come to the conclusion whether or not the appellant have genuinely availed the credit on those items. Therefore, it is contended that the impugned order is not sustainable in law and the same needs to be set aside.

5. Shri M.S.Negi, learned DR, on the contrary, has argued in support of the impugned order and submitted that credit demand has rightly been confirmed against the appellant because the appellant has not given evidence or details regarding user of the disputed items against which the credit was availed by the appellant.

6. We have considered the submissions from both sides and perused the records. Definition of capital goods as given in rule 2(a) includes among other items "tanks" and also the parts, components, accessories of capital goods. Besides this, the definition of input as given in rule 2(k) covers the items used for manufacture of capital goods for use in the factory. In this regard, the appellant placed additional submissions dated 17.8.2011 where they had given a detailed chart showing user of various items of capital goods and according to which they have used these items for fabrication of tanks, ~~and~~ parts of boilers and other items of capital goods. If this claim of the appellant is correct, then the items, in question, would be eligible for credit. However, neither order-in-original nor impugned order-in-appeal has discussed the submissions of the appellant. In view of this, the impugned order is set aside and the matter is remanded back to the original adjudicating authority for de novo adjudication after examining the submission of the appellant regarding user of the items, in question, in relation to the manufacture of capital goods. The adjudicating authority shall give an opportunity to both parties to lead evidence if any, in support of their claim

7. The appeal as well as stay application stand disposed of as above.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

mk