REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70864/2015- dated 15/10/2015

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.**

SBS Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/3311/2006	MAHAAN PROTEINS LTD VILL-BARHANA, TUMBERA ROAD, KOSIKALAN(MATHURA) UP

Name and Address of Respondent: CCE LUCKNOW
7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI.

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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT ALLAHABAD
COURT NO. I

Appeal No. E/3311/2006

(Arising out of Order-in-Original No. 02/Commissioner /LKO/06-07 dated29.6.2006 passed by the Commissioner of Central Excise & Service Tax, Lucknow).

For approval and signature:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Raju, 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?	:	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
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?	:	Yes

M/s Mahaan Proteins Ltd. — Appellant

Vs.

Commissioner of Central Excise, Lucknow — Respondent

Appearance:

Shri Manish Gaur, Advocate — for Appellant

Shri Chatru Singh, AC (AR) — for Respondent

CORAM:

SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 15.10.2015

Date of Decision: 15.10.2015

F.O. ORDER NO. 70064/2015

Per: Raju

The appellants, M/s Mahaan Proteins ~~Ltd.,~~ are manufacturer of milk products in relation to which they took credit of duty paid on certain inputs. They manufacture both dutiable as well as exempted product. In 2004, the Revenue enquired about the process of manufacture and about the records maintained regarding receipt, storage etc. On finding out that they are taking credit of certain inputs which are common to both dutiable as well as exempted products, revenue conducted some necessary investigations and issued a show-cause notice demanding the amount under Rule 57AH of the erstwhile Central Excise Rules, 1944 read with Rule 12 of Cenvat Credit Rules, 2001/2002 and Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A and Section 11AE. The appellant deposited the entire amount of the credit availed along with interest @ 18%. The notice was adjudicated by the Commissioner, who concluded as follows

> I find that the notice has reversed entire credit availed with interest. I also agree with the contention of the notice based on citations that reversing of credit with interest amounts to as if no credit has been taken and by reversing they have accepted Department's stand and cause of action for demand has been removed. This also indicates that the noticee has accepted legal stand of the Department. However on effect of this reversal of credit on demand raised, I note that all the citations are in favour of the party. Thus if, modvat is paid with interest the advantage is in party's favour. Therefore, I arrive at the decision that though the demand is legally sustainable, on effect of reversal of full modvat credit availed with interest, the same is not enforceable. "

The Commissioner did not give any order regarding recovery or confirmation of demand of the amount demanded. However the Commissioner imposed penalty under section Rule 57AH of the erstwhile Central Excise Rules, 1944 read with Rule 12 of Cenvat Credit Rules, 2001/2002 and Rule 14 of the Cenvat Credit Rules, 2004 read with section 11AC.

2. The learned Counsel for the appellant draws our attention to the provisions of Section 69 and 70 of the Finance Act, 2010, wherein an Amnesty Scheme for such case was introduced. The said amnesty scheme provided for payment of an amount equivalent to credit attributable to inputs used in or in relation to manufacture of such final products which are not chargeable to duty or chargeable Nil rate of duty. On such reversal, no penalty was imposable. The said provisions also provided for procedure to be followed in this regard.

2.1 The learned Counsel argued that they have not only reversed the proportional credit along with interest @ 18% but they have reversed the entire credit taken along with 18%. The learned Counsel also draw to our notice the decision of Hon'ble High Court of Punjab & Haryana in case of *CCE, Ludhiana Vs. Sangrur Agro Ltd. – 2010 (254) ELT 25 (P&H)*. The ld. Counsel also cited the decision of in the case of *Eastern Medikit Ltd. Vs. CCE, Gurgaon – 2009 (242) ELT 51 (Tri-Del)*. He specifically highlighted the observations of the Tribunal in para 3 thereof, which reads as under :

> "3. I have carefully considered the submissions from both the sides and perused the records. The Appellant have taken Cenvat credit in respect of common inputs which were used in manufacture of dutiable as well as exempted finished products and it is also not in dispute that separate record and separate inventory of the inputs used in the manufacture of dutiable and exempted finished products had not maintained. Though the Appellant plead that they have not taken Cenvat credit in respect of inputs going into the manufacture of exempted finished products, I find that documents in this regard had been not produced before the Commissioner (Appeals) and as such, they have not even disputed their liability to pay an amount equal to 8% of the value of the exempted finished products at the time of their clearances. It is only imposition of penalty under Section 11AC which has been disputed. According to the Deptt., they are liable for penalty equal to this amount as per the provisions of Section 11AC. The question now arises as to whether the provisions of Section 11AC are applicable at all for non-payment of the amount due under Rule 6(3)(b) of Cenvat Credit Rules. The Tribunal in the case of *CCE v. Sangrur Agro Ltd.* (supra) has held that the provisions of Section 11AC are not applicable in respect of short payment or non-payment of the amount due under Rule 6(3)(b) of the Cenvat Credit Rules. As per Explanation-I to Rule 6(3), amount mentioned in Clause (a) and (b) of sub-rule 3 of Rule 6 shall be paid by the manufacture by debiting the Cenvat credit or otherwise and as per Explanation-II, if a manufacturer fails to pay the said amount, it shall be recovered alongwith interest in the same manner as provided in Rule 12 for recovery of wrongly talen Cenvat credit. Rule 12 of the Cenvat Credit Rules provide that where the Cenvat credit has been taken or utilized wrongly or

> erroneously refunded the provisions of the Section 11A or 11AB shall apply *mutatis muntandis* for such recovery. Neither Explanation-II to Rule 6(3) refers to Rule 13 for imposition of penalty if the manufacturer does not pay the amount due under this sub-rule nor Rule 13 provides for penalty in this regard. In view of these circumstances, following the Tribunal's judgment in the case of *CCE v. Sangrur Agro Ltd.* (supra), I hold that no penalty is imposable on the Appellant under Section 11AC and as such the impugned order upholding the penalty on the Appellant under Section 11AC is not sustainable. The impugned order, therefore, is set aside and the appeal is allowed."

2.2 The learned Counsel asserted that Section 11AC cannot be invoked for the violation alleged in the show-cause notice and the penalty under Section 11AC cannot be imposed.

3. The learned AR for the Revenue relied on decision of the Hon'ble Supreme Court in the case of Rajasthan Weaving & Spinning Mils - 2009 (238) ELT 3 (SC) and asserted that even if the amount demanded has been paid, penalty under Section 11AC can still be imposed.

4. We have considered the rival contentions. We find that the Order-in-Original does not confirm any demand whatsoever. The order however imposed penalty under Section 11AC of the Central Excise Act read with Rule 57AH of the erstwhile Central Excise Rules, 1944 read with Rule 12 of Cenvat Credit Rules, 2001/2002 and Rule 14 of the Cenvat Credit Rules, 2004.

4.1 In the decision of Hon'ble High Court of Punjab & Haryana in case of *CCE, Ludhiana Vs. Sangrur Agro Ltd. – 2010 (254) ELT 25 (P&H).*, the Hon'ble High Court while examining the similar case has observed as follows: -

> "3. The short question is whether the respondent is liable to pay penalty and interest on the excess amount claimed by it? The Commissioner (Appeals) as well as the Tribunal have held that provisions of Section 11AC of the Central Excise Act are inapplicable as they relate only to short payment of duty, whereas the present case relates to reversal of the excess amount claimed by the respondent in terms of Rule 6(3)(b) of the Cenvat Credit Rules. Apart from the above, a perusal of the language of Section 11AC of the Central Excise Act shows that the same would be applicable only if in case where there is an attempt to evade duty. The

> present case relates to reversal of amount under Rule 6(3)(b) of the Cenvat Credit Rules. We are of the considered opinion that Section 11AC of the Central Excise Act is not applicable in the present case. The findings of the Appellate Tribunal are upheld."

On examination of Hon'ble High Court of Punjab & Haryana in he case of *Sangrur Agro Ltd.* (supra) and the Tribunal in the case of *Eastern Medikit Ltd.* (supra), we find that the issue is squarely covered by the said decisions. The decision cited by the learned AR, the facts are totally different and cannot be applied in the instant case.

5. In view of the above, the appeal is allowed and the impugned order is set aside.

(Pronounced in Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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