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

Dated: 14/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70808/2016 SM dated 23/10/2015

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.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/55159/2014	WAVE INDUSTRIES PVT LTD PANNI NAGAR BULANDSHAHAR UP
	Name and Address of Respondent	CCE, NOIDA C-56/42, SECTOR-62 NOIDA

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH AALOK ARORA,ADV
82-MISSION COMPOUND
SAHARANPUR-247001.

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.55159/14

Arising out of OIA No.EXCUS/000/APP/096/2014-15 dt. 30.04.2014 passed by Commissioner of Central Excise (Appeals) & S.Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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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 His Lordship wishes to see the fair copy of the Order? : Seen.
4. Whether Order is to be circulated to the Departmental Authorities? : Yes.

M/s Wave Industries Pvt. Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.Tax, Noida RESPONDENT (S)

APPEARANCE

Shri Aalok Arora, Adv. for the Appellant (s)
Shri Ashok B. Kulgod, A.C. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 23. 10. 2015

Final ORDER NO. 70008/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपील अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The Appellant, M/s Wave Industries Pvt. Ltd. in Appeal against Order-in-Appeal Nos. EXCUS/000/APP/096/2014-15 dt. 30.04.2014 passed by Commissioner of Central Excise (Appeals) & S.Tax, Noida, by which, OIO was upheld.

2. The brief facts are that there was an inspection in the factory premises on 22/02/12 whereby the stock of sugar, molasses was taken and some discrepancy was found to the effect that against the stock of 92, 736.10 quintals of Molasses, an excess of 1272.2 quintal was found. Against the stock of sugar on the date 1,34,190 quintals, shortage of 65 quintals was found. It was found that the appellant have cleared Bagasse and Press Mud exempted products from the factory but were not reversing the proportionate Cenvat credit on inputs, nor paying the amount equivalent to 5% of the amount charged by them at the time of clearance of the same, as required under rule 6 of Cenvat Credit Rules. It appeared that the appellant was required to reverse an amount of Rs.18,828/- on clearance of Bagasses, Rs.31,595.10 on clearance of Press Mud. It further appears from the balance sheets maintained by the appellant that the appellant have cleared M.S.Scraps valued at Rs. 59,96,242/- during the year 2010-11 and Rs. 97,57,066/- during the year 2011-12 on which no Central Excise duty was paid as required under Rule 3(5A) of the Cenvat Credit Rules. The person-in-charge, Mr. Gopal Sharma, DGM, was present at the time of inspection, explained that they had purchased the unit on as is where is basis on 20/10/2010 from Uttar

Pradesh Sugar Corporation Ltd,. It appeared to revenue that the appellant is required to pay Central Excise duty under C.C. Rules on clearance of the scrap. Accordingly, it was proposed to recover an amount of Rs.13,34,015/- against sale of the scrap. An amount of Rs.2,99,184/- was also demanded towards clearance of the scrap. Further penalty was proposed under rule 25 read with section 11 AC along with interest. The appellant contested the show cause notice by filing reply and objections and the same was adjudicated vide Order-in-Original dated 5.11.2013 whereby the stock of excess molasses valued at Rs. 3,94,320/- was seized /confiscated with an option to redeem by paying fine of Rs.1.00 lakh. Further, 65 quintal of sugar was found short and duty thereon Rs.6,018/- was confirmed. Further, duty on bagasse and press mud cleared was determined and the amount paid during investigation, being equal was appropriated. Further duty amount of Rs. 16,33,199/- was confirmed on the scrap and the amount paid during investigation Rs. 13,03,116/- was appropriated. Further equal amount of penalty was imposed Rs. 16,33,199/- under rule 25 of Central Excise rules along with interest on the duty amount. Being aggrieved the appellant preferred appeal before ld. Commissioner vide the impugned order, he has pleased to reject the appeal.

3. Being aggrieved the appellant is in appeal before this Tribunal. The ld. Counsel for the appellant has urged that whatever difference or excess stock of mollases is alleged, the same is a normal variation in taking the stock which was taken at about 1:30 PM on the date of

inspection when the production was in process. The ld. Counsel further draws my attention that the stock of molasses is also monitored by the State Excise Authority. He has got my attention to form MF-5 (stock register) for molasses under the State Excise Act, wherein there are periodical inspection made by the State Authority. He further points out from the copy of the daily stock account, RG1 register dated 16.04.12 wherein the opening balance have been corrected as 89,412.48 quintal instead of 89255 quintal in consultation with the State Excise. The balance appeared as 89255 quintal but excess quantity was found on inspection on 11.4.2012 at 157.48 quintal and the same was added to the stock and appropriate correction was made in the stock register. That in view of the constant monitoring of the stock register and there being element of variation due to foam element, he urges that the ld. Commissioner have erred in drawing adverse conclusion and the same is fit to be set aside. So far as the issue of stock of sugar is concerned, he urges that the variation is only 65 quintals which is less than half percent of the total stock of sugar on the date. Further the production was going on and the Sugar Stacks were disturbed and in the process of being completed and as such the minor variation is a normal feature and the authority below have erred in drawing adverse conclusion. Further, he urges that that is no discrepancy in the stock of sugar as per the clearance records as maintained for the period. The variation being negligible on the date of inspection, did not attract any adverse inference. So far the issue of clearance of Press Mud and bagasses, is concerned, he draws my attention to the ruling of Honourable Allahabad High Court in the case of Balarampur Chini Mills Ltd. Vs. Union of India 2014 (300) ELT 372 (All.), wherein the Honourable High Court have held that press mud and bagasse are waste generated in the process of manufacture of sugar and molasses and as such no duty is required to be paid and/or reversed on the clearance of the same. Against the ruling of Honourable Allahabad High Court, in the aforesaid case, Revenue had filed Appeal before the Honourable Supreme Court wherein the ruling of the Honourable High Court have been upheld by holding that Rule 6 of CCRis not attracted for clearance of waste in the case of Union of India Vs. DSCL Sugar Ltd. : 2015 (322) ELT 769 (S.C.). So far as the question of scrap is concerned, it is urged that the appellant had not taken any Cenvat credit on the capital goods involved in this scrap. Further the appellant had taken over the factory including its Management only on 20th October,2010 from Uttar Pradesh State Sugar Corporation Ltd. on "as is where is basis". It is further evident that the scrap sold was duly accounted for in the books of account and the appellant had also sought are also paid the sales tax (VAT) on the same. Thus, there is no suppression and the extended period is not invokable in respect of the same, moreover it is an admitted fact that scrap transaction was reflected in the balance sheets prepared by the appellant, which is admittedly the basis of information of the revenue. He further urges that no duty was payable on the waste and scrap which practically came out of the demolishing of the hutments existing on the factory premises and as such duty confirmed on the scrap of tin is wholly without any basis and fit to be set aside. He further urges that in the facts and circumstances, no penalty is excigable on it and the same is fit to be set aside.

4 The learnedly relies on the impugned order.

5. Having considered the rival contentions, I find that in view of the agreed position between the stock records under Central Excise and under the State Excise and also in view of the periodic inspections, duly endorsed in the State Excise Records, I hold that there is no reason for drawing the adverse inference in respect of some excess stock on the date of inspection which is hardly about 2.5% of the gross stock on that date. Further as manufacturing process was going on, there is bound to be some error in the stock taking as there was element of estimation due to the presence of foam in the top layer of the tanks. Similarly the variation in the stock of sugar on the physical stock taken, being less than half percent, the same is considered as a normal variation in stocktaking in view of the production being in process and accordingly the duty confirmed with respect to sugar and molasses is set aside. So far the duty confirmed on bagasse and press mud is concerned the same is not excisable being waste as held by the Honourable Supreme Court in Union of India Vs. DSCL Sugar Limited (supra). So far the duty confirmed on the scrap sold is concerned, I hold that that is no element of suppression in view of the fact that the appellant had raised proper invoices for clearance of the scrap and also accounted for in the books of accounts ordinarily maintained as well as paid the sales tax on the same. Further, the transaction was also reflected in the balance sheet prepared for the periods. In this view of

the matter I hold that extended period of limitation is not invokable. The duty relating to the normal period on the sale of the MS scrap is confirmed. So far the duty on clearances of tin scrap is concerned, as the same relates to and got from the dismantling of hutments which contention was not found untrue, the duty on the tin scrap is deleted. Further the penalty imposed is set aside. Thus, the impugned order is modified to the extent as indicated above. The appellant will be entitled to consequential benefits if any, in accordance with law.

6. Thus, the appeal is allowed in part.

(Dictated and pronounced in the open Court)

mm

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
21.1.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001