FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 20/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70269/2017-SM[BR] dated 10/03/2017

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
1 E/CROSS/54/2009	E/131/2009	**Commissioner of Customs, Central Excise and Service Tax-Allahabad** 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH 211001
		Name and Address of Respondent
2		Saraya Sugar Mills Ltd. Sardar Nagar, Gorakhpur, (u.p.),,

Copy To

3Advocate(s) / Consultant(s):

S. P. Ojha
299, Baghambari Housing Scheme,
Allahpur,
Allahabad,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

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

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

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

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No. E/131/2009-EX[SM] With
CROSS Application No. E/CROSS/54/2009

(Arising out of Order-in-Appeal No. 112 & 113/CE/APPL/ALLD/2008 dated 20/11/2008 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

Commissioner of Central Excise, Allahabad — **Appellant**

Vs.

M/s Saraya Sugar Mills Ltd. — **Respondent**

Appearance:

Shri D. K. Deb, Assistant Commissioner, (AR), for Appellant
Shri S. P. Ojha, Consultant, for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 10/03/2017

FINAL ORDER NO....70269/2017.......

Per: Anil Choudhary

The issue in this appeal by Revenue is, whether the finding of the Commissioner (Appeals) – as per Rule 25 of the Central Excise Rules, 2002, is subject to provision of Section 11AC of the Central Excise Act, 1944, therefore, simultaneous penalty under Rule 25 of Central Excise Rules, 2002 and Section 11AC of the Central Excise Act, 1944, cannot be imposed, does not appear to be legally correct, as there is no restriction in the Central Excise law that penalties cannot be imposed under Section 11AC & Rule 25 of the rules independently.

2. Heard ld. A. R. for Revenue who has taken me through the facts on record and the findings of the Additional Commissioner in the Order-in-Original and the ld. Commissioner (Appeals) in the Order-in-Appeal. Further, relied on the ruling of this Tribunal in the case of Commissioner of Central Excise, Indore *Versus* Gahoi Foods Private Ltd. reported at 2004 (168) E.L.T. 479 (Tri. – Delhi) wherein it has held - allowing the appeal of Revenue that non apportionment of penalty under two provisions of law, namely, Section 11AC of the Act & Rule 173Q of Central Excise Rules, 1944 (now Rule 25 of Central Excise Rules, 2002) could not be made basis by Commissioner (Appeals) for setting aside penalty in toto. Further, reliance is placed on the ruling in the case of Sanden Vikas India Ltd. *Versus* Commissioner of Central Excise, Delhi –IV reported at 2004 (176) E.L.T. 708 (Tri. – Delhi) wherein it was held - rejecting the appeal of the appellant-assessee and upholding penalty under Section 11AC of the Act, is correct, this Tribunal following the ratio of judgement of Hon'ble Supreme Court in the case of Zunjarrao Bhikaji Nagarkar *Versus* Union of India reported at 1999 (112) E.L.T. 772 (S. C.) wherein it was held that the imposition of penalty under Rule 173Q of erstwhile Central Excise Rules, 1944 (Rule 25 of Central Excise Rules, 2002) is mandatory. It is further urged that the Commissioner (Appeals) had not taken into consideration the fact that once suppression of facts with intent to evade duty has been

established. In a particular case, the penalty under Rule 25 of Central Excise Rules, 2002, not exceeding the duty on the excisable goods or Rs.10,000/- whichever is greater, is imposable.

3. The ld. Consultant for the respondent-assessee relies on the impugned order and the cross objections, which are in support of the impugned Order-in-Appeal.

4. Having considered the rival contentions and on perusal of record, I find from the plain language of Rule 25 of Central Excise Rules, 2002, which reads –

(i) Subject to the provisions of Section 11 AC of the Central Excise Act, 1944, if any producer, manufacturer, registered person of a warehouse or an importer who issues an invoice, on which Cenvat credit can be taken or a registered dealer, -

Clause (A) - removes any excisable goods..............

Clause (B) does not account for any excisable goods............

Clause (C) - engages in the manufacture, production or storage, without applying for registration......................

Clause (D) - contravenes any of the provisions of these Rules or the Notification, issued under these Rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or any importer who issues an invoice, on which

Cenvat credit can be taken or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods, in respect of which, any contravention of the nature referred to, in clause A or clause B or clause C or clause D, has been committed.

5. Thus, from the plain reading of the Rules, it is evident that for the purpose of penalty not only the default as mentioned in Rule 25 of Central Excise Rules, 2002, but also the elements of fraud, suppression of facts, misrepresentation, etc. as mentioned in section 11AC of the Central Excise Act, 1944, must be present so as to attract penalty under these Rules. Thus, from the very language of the Rule, it is evident that the scheme of the Act read with the Rules, does not provide for two separate penalties, one under Section 11AC of the Central Excise Act, 1944 and another under Rule 25 of the Central Excise Rules, 2002. Accordingly, there is no merit in the appeal of Revenue, the same is dismissed. The Cross Objection is also disposed of.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
25/03/17

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