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: 17/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70365/2017-SM[BR] dated 03/03/2017

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/424/2011	CHADHA SUGAR PVT. LTD., (NOW KNOWN AS M/S WAVE INDS. PVT. LTD.) VILL. MALASIA, DHANAURA DISTT. J.P. NAGAR (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To

3Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : E/424/2011-EX[SM]

Arising out of OIA No. 348-CE/MRT-II/2010 dated 30.09.2010 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II.

M/s Chadha Sugars Pvt. Ltd. ...APPELLANT

VERSUS

C.C.E. -Meerut-II ...RESPONDENT

APPEARANCE

Shri Mayank Garg, Advocate for the appellant.
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department.

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 03. 03. 2017
FINAL ORDER NO. - 70365/2017

Per Mr. Anil G. Shakkarwar :

The appeal is directed against the OIA No. 348-CE/MRT-II/2010 dated 30.09.2010 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II.

2. The appellant is manufacturer of sugar and molasses. The brief facts of the case are that the Central Excise officers visited the factory premises of the appellant on 23.04.2009 & 24.04.2009 and found that there were 4053 quintals of sugar excess in the stock within the factory premises as compare in the stock recorded in RG-1 register. Therefore, show cause notice dated 30.04.2009 was issued proposing

to confiscate said unaccounted quantity of sugar under Rule 25 of Central Excise Rules, 2002 with a proposal to impose penalty under Section 11AC of Central Excise Act, 1944. The said show cause notice was adjudicated through Order-in-Original dated 17.04.2010 through which Original Authority confiscated 4053 quintals of sugar under Rule 25 of Central Excise Rules, 2002 and imposed redemption fine of Rs. 24,83,476/-. Further, the Original Authority imposed penalty of Rs. 3,96,596/- under Section 11AC of Central Excise Act, 1944. Appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal dated 30.09.2010. The learned Commissioner (Appeals) rejected the appeal and upheld the Order-in-Original dated 17.04.2010. Aggrieved by the said order appellants have preferred present appeal before this Tribunal.

3. Heard the learned counsel for appellant who has submitted that three times counting was done and every time different result was achieved and therefore they requested for once again re-counting which was turned down. He has further relied on ruling by Hon'ble Gujarat High in the case of ***Commissioner of Central Excise Vs. Resham Petrotech Ltd.*** reported at ***2010(258) E.L.T. 60 (Guj.)*** and contended that in para-4 of the said ruling the Hon'ble High Court of Gujarat has ruled that the liability to pay duty arises at the point of time when the goods are to be removed from the factory premises and if the goods are lying in the factory premises the occasion to pay duty has not arisen and therefore it is not possible to accept the contention that there was any intention to clandestinely remove the goods.

4. Heard the learned D.R., who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, I find that time and again various appellant authorities have always ruled that if the goods in excess are found in factory as compare to the quantity of goods recorded in the RG-1 register, then such goods are directed to be recorded in RG-1 register so that they get accounted for and are subjected to duty when they are cleared. Further, such short coming cannot be treated as evasion of duty and such goods on which the occasion for payment of duty has not yet arisen cannot be treated as goods liable for confiscation. I, therefore, set aside the impugned Order-in-Original and Order-in-Appeal and allow the appeal.

(Pronounced and dictated in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Patel/-

03/05/2017
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