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: 23/06/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70585/2017-SM[BR] dated 22/06/2017

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/790/2012	AKBARPUR CHINI MILLS UNIT OF BALRAMPUR CHINI MILLS, MIJHAURA, TEHSIL-BHITI, DISTT - AMBEDKAR NAGAR
		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

3 Advocate(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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/790/2012-EX[SM]

(Arising out of Order-in-Appeal No. 04/CE/APPL/ALLD/2012 dated 06/01/2012 passed by Commissioner of Central Excise (Appeals), Allahabad)

Akbarpur Chini Mills	**Appellant**
Vs.	
Commissioner of Central Excise, Allahabad	**Respondent**

<u>Appearance:</u>

Ms. Stuti Saggi (Advocate)	for Appellant
Shri Pawan Kumar Singh (Supdt.) AR,	for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	22/06/2017
Date of Decision	:	22/06/2017

FINAL ORDER NO....70585/2017....

Per: Anil G. Shakkarwar

The present appeal is directed against Order-In-Appeal No. 04/CE/APPL/ALLD/2012 dated 6.01.2012 passed by Commissioner (Appeals) Central Excise, Allahabad.

2. Brief facts of the case are that the appellant are manufacturers of Sugar and Molasses. Audit of the appellants' accounts were conducted and it was noticed by Revenue that the appellant had taken inadmissible Cenvat Credit of Rs. 6,07,991/-, Rs. 3,69,302/-, Rs. 1,41,971/-, Rs.19,700/, Rs. 1,836/- and Rs. 1,148/-. On being pointed

out by audit, appellant debited said entries of Cenvat Credit in their Cenvat account maintained under RG 23 through entries dated 08.08.2006. Further as reflected in the show cause notice dated 14.08.2008 interest of Rs. 1,36,335/- was deposited by the appellant. The appellant were issued vide show cause notice dated 14.08.2008, wherein there was a proposal to disallow already debited above stated Cenvat Credit and appropriation of interest already deposited. There was a proposal to impose penalty on the appellant. The issue was adjudicated through Order-In-Original dated 23.06.2011. The Original Authority confirmed the demand and imposed equal penalty. Further the Original Authority also ordered that interest was payable. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 06.01.2012. The learned Commissioner (Appeals) upheld Order-in-Original dated 23.06.2011 and rejected the appeal. Aggrieved by the said order the appellant is before this Tribunal.

3. Heard learned Counsel. The learned Counsel has submitted that all the entries of Credit of Cenvat objected by audit were debited along with the interest and therefore as hold the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires Pvt. Ltd. v/s Collector of Central Excise, Nagpur reported at 1996 (81) ELT 3 (SC), the debited entry made in the Cenvat account should nullify the Credit entry

and also that interest was paid and, therefore, penalty imposed may be set aside.

4. Learned AR has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions, I find that the Hon'ble Supreme Court has ruled in Para 7 of above said case of Chandrapur Magnet Wires Pvt. Ltd. that if the debit entry is permissible to be made, Credit entry for the duties paid on the input utilized in the manufacture of final exempted products will stand deleted in the accounts of the assessee. In simple terms the Hon'ble Supreme Court has ruled that the debit entry of an irregular Cenvat credit will nullify the credit taken in the Cenvat account. Since the appellant has debited all the entries of Cenvat credit objected by Revenue alongwith interest there was no need for issue of present show cause notice. Since show cause notice was not to be issued, the question of imposition of penalty does not arise. I, therefore, modify the impugned Order-in-Appeal by setting aside the penalty imposed. The Appeal is allowed partially in above terms.

(Dictated and pronounced in Court)

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

प्रमाणित प्रति/Certified True Copy
04/07/2017
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

Ankit