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: 09/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70538/2017-EX[DB] dated 18/05/2017

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/816/2011	**HAIDERGARH CHINI MILLS,** HAIDERGARH, DISTT. BARABANKI.
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

3Advocate(s) / Consultant(s):

MS.STUTI SAGGI
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/816/2011-EX[DB]

(Arising out of Order-in-Original No. 46-Commr./LKO/CX/2010 dated 28/12/2010 passed by Commissioner of Central Excise, Lucknow)

M/s Haidergarh Chini Mills **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Ms. Stuti Saggi, Advocate, for Appellant
Shri Rajeev Ranjan Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 18/05/2017

FINAL ORDER NO....70538/2017....

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. 46-Commr./LKO/CX/2010 dated 28/12/2010 passed by Commissioner of Central Excise, Lucknow.

2. It appeared to Revenue that the appellants were manufacturing Bagasse and said Bagasse was being further utilized in generation of electricity within the factory. It appeared to revenue that Bagasse was being cleared at nil rate of duty and that simultaneously sugar was being manufactured and cleared at appropriate rate of duty. It further appeared that Cenvat credit was availed and two

streams of goods were manufactured viz. Sugar & Bagasse and Bagasse was attracting nil rate of duty and hence appellant were required to pay amount as required under Rule 6(3)(a) of Cenvat Credit Rules 2002/2004. The appellants were issue with a Show Cause Notice dated 30/03/2009 wherein they were called upon to show cause as to why the amount of Rs.1,46,66,031/- should not be recovered from them for the period from March, 2004 to December, 2008 under Rule 12 & 14 of Cenvat Credit Rules, 2002/2004 respectively in view of the provisions of said Rule 6(3)(a) of Cenvat Credit Rules 2002/2004. On contest the Show Cause Notice was adjudicated through said Order-in-Original No. 46-Commr./LKO/CX/2010 dated 28/12/2010, wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said Order-in-Original dated 28/12/2010 appellant has filed this appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant. She has submitted that Hon'ble Supreme Court of India in the case of Union of India *Versus* DSCL Sugar Ltd. reported at 2015 (322) E.L.T. 769 (S.C.) has held that Bagasses is only an agriculture waste and residue and it is not a result of any process and not covered in the definition of manufacture under Section 2(f) of Central Excise Act, 1944. The ld. Counsel has pleaded that since Bagasse is not an excisable

commodity the provisions of Rule 6(3)(a) of Cenvat Credit Rules 2002/2004 do not apply to the same.

4. Heard the ld. D. R. Who has submitted that the ruling of Hon'ble Supreme Court of India in the case of Union of India *Versus* DSCL Sugar Ltd. (supra) is applicable in the present case.

5. We have considered the submissions of both sides. We have gone through the ~~ruing~~ ruling of Hon'ble Supreme Court of India in the case of Union of India *Versus* DSCL Sugar Ltd.(supra). We find that Hon'ble Supreme Court of India have ruled that Bagasse is only an agriculture waste and residue and also that Bagasse is not covered in the definition of manufacture. We, therefore, hold that provisions of Rule 6(3)(a) of Cenvat Credit Rules 2002/2004 do not apply on the removal of Bagasse or utilization of Bagasse. We, therefore, find that the impugned Show Cause Notice is not sustainable and accordingly we set aside the impugned Order-in-Original passed by Commissioner of Central Excise, Lucknow and allow the appeal. The appellant shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Cerified True Copy
14/06/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
8, एम. जी. मार्ग, इलाहाबाद-211001
8, M. G. MARG, ALLAHABAD-211001