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

Dated: 04/03/2016

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

Final Order No. A/ 70093-70094/2016 DB dated 22/01/2016

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/373&266/2007EX	THE KISAN SAHKARI CHINNI MILLS LTD TILHAR, DISTT- SHAHJAHANPUR UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s

SH BIPIN GARG,ADV
B-1/1289-A, VASANT KUNJ
NEW DELHI-70

DUSHYANT KUMAR,CONST
C/O PARTY

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), Vaithiyaram 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,Panjagutta 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.373/07 & 266/07

Arising out of O/A Nos.128-CE/LKO/2006 dated 25.08.2006 and 102-CE/LKO/2006 dated 18.09.2006 both passed by Commr. (Appeals) of Customs & Central Excise & S. Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

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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

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M/s The Kisan Sahakari Chinni Mills Ltd. ...APPELLANT(S)

VERSUS

Commr. of Central Excise & S. Tax, Lucknow RESPONDENT (S)

APPEARANCE

Shri Dushyant Kumar, Consultant for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

HK

DATE OF HEARING & PRONOUNCEMENT : 22. 01. 2016

Final ORDER NO. 70093-70094/2016

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

Per Mr. H. K. Thakur :

These two appeals have been filed by the appellants against Orders-in-Appeal passed by the Commissioner (Appeals) of Central Excise, Lucknow. The issue involved in both these appeals, is the same, therefore, these are being taken up together for disposal.

2. Shri Dushyant Kumar, ld.Consultant appearing on behalf of the appellant, argued that the appellant was directed by the Government of India to clear certain quantities of sugar from free sale quota at levy sugar rate for distribution through PDS. It is the case of the appellant that subsequently after three years, differential amount of price between the levy sugar and free sale sugar, was reimbursed to the appellants. It is urged by the ld.Consultant that the entire quantities of free sale sugar was sold at lower price (levy rate) through PDS system, was shown in the RT-12 Returns filed with the Department. It was strongly argued by the ld.Consultant that once all the details are truly reflected in the RT-12 Returns, then extended period cannot be invoked.

3. Shri Pawan Kumar Singh, Supdt. (A.R.) appearing on behalf of the Revenue argued that the ld.Commissioner (Appeals) has given clear cut findings in his order that the appellant has not agitated on issue of limitation.

4. Heard both sides and perused the case records. The appellant's case is that demand has been raised after a period of one year and is time barred. It is the case of the appellant that the entire demand is time barred. In Paragraph 11.2 of Order-in-Appeal dated 25.08.2006, the First Appellate Authority has given an observation that the

appellant has not countered the time bar issue. However, it is observed from Para 3 (iii) of the same Order-in-Appeal that the ground of limitation was taken by the appellant before the First Appellate Authority. It is observed from the show-cause notice issued to the appellant in both these proceedings that demand has been raised after a period of one year. In the case of clearance of levy sugar quantities and free sale sugar quantities for a period, quantity cleared under both these categories has to be reflected in the RT-12 Returns filed by the appellant. Once such quantity details are reflected in the assessee's returns, then the Department can also find out whether levy sugar quantity has exhausted. Under these factual matrix, it cannot be said that the appellant has suppressed any fact with intent to evade payment of duty. Accordingly, extended period cannot be made applicable in these proceedings and accordingly, both the appeals filed by the appellant are allowed on time bar. The impugned orders are set aside.

(Pronounced in the open Court)

Sd/-
(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
15.3.16
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