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: 26/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71160/2016-SM[BR] dated 30/11/2016

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 |
| --- | --- | --- |
| 1 E/CROSS/237/2010 | E/2699/2010 | CCE MEERUT OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP) |
| | | Name and Address of Respondent |
| 2 | | SIMBHAOLI SUGAR LTD. SIMBHAOLI, DISTT. GHAZIABAD (U.P.),, |

Copy To

3Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

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. 2

APPEAL No. E/2699/2010-EX[SM]

(Arising out of Order-in-Appeal No. 155-CE/MRT-II/2010 dated 30/04/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

For approval and signature:

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

| | | |
|---|---|---|
| 1. | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | No |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 3. | Whether their Lordships wish to see the fair copy of the order? | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | Yes |

**Commissioner of Customs & Central Excise, Meerut-II** **Appellant**

Vs.

**M/s Simbhaoli Sugar Ltd.** **Respondent**

Appearance:

Shri D.K. Deb, Assistant Commissioner, (AR), for Appellant
Shri Rajesh Chhibber, Advocate, for Respondent

**CORAM:**

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

Date of Hearing & Date of Decision: 30/11/2016

FINAL ORDER NO....71160/2016.........

**Per: Anil Choudhary**

The present appeal is filed by Revenue against the Order-in-Appeal No. 155-CE/MRT-II/2010 dated 30/04/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II. The issue in this appeal is whether the ld. Commissioner (Appeals) have rightly allowed the appeal of respondent-assessee, holding that the Show Cause Notice was time barred as under the facts and circumstances extended period of limitation was not invokable.

2. The brief facts of the case are that the appellant is engaged in manufacturer of V.P. Sugar & Molasses falling under Central Excise Tariff Sub-heading No. 17011190 & 17031000 respectively of the first Schedule to the Central Excise Tariff Act, 1985. They availed Cenvat credit on inputs & capital goods. In the course of audit for the period from April, 2007 to September, 2008, the Revenue objected to Cenvat credit taken on the Iron & Steel as said articles are falling under chapter 72 & 73, on Nickel Screen falling under chapter 75 and on Tin falling under chapter 80 of the first Schedule to the Central Excise Tariff Act, 1985, are not eligible for Cenvat credit. Accordingly, Show Cause Notice dated 26/03/2009, was issued proposing to recover Rs.23,03,995/- by disallowing the Cenvat credit taken on these items. It is further evident that the transaction was duly recorded in the books of accounts maintained in the ordinary course of business and there is no element of any

concealment and/or suppression or contumacious conduct on the part of the respondent-assessee. In the course of statement recorded of the Authorized Representative working as Senior Commercial Manager, Mr. Atul Sharma, on 23/03/2009, it was stated that Nickel Screen has been used in centrifugal machines. The said Nickel Screen is required to be replaced from time to time. The Steel Tubes have been used for transporting Cane Juice or Sugar Syrup from one stage to other stage in connection with manufacture of sugar. The articles of Iron & Steel such as Plates, Shape & Section, Channel etc. has been used for fabrication of staging, platform and structures, to keep required machines at the prescribed height. Further, it was stated that no capital goods has been manufactured from the said articles of Iron & Steel and therefore there has been no separate or specific declaration in the ER-1 returns. And, accordingly, they have rightly taken Cenvat credit as inputs. In spite of categorical stand taken by the respondent-assessee and periodical audits in 2007, 2008, but Show Cause Notice has been issued on 26/03/2009 which is beyond a period of 12 months.

3. The ld. Commissioner (Appeals) have observed that the Adjudicating Authority have not negated the assertions of the respondent-assessee and moreover the issue of Modvat/Cenvat credit, on the disputed items, was subjudice before four different Authorities and even this Tribunal had taken different views, under similar facts and circumstances.

Accordingly, the ld. Commissioner have found that no case of any contumacious conduct, concealment etc., is found or made out and accordingly allowed the appeal of the respondent-assessee holding the Show Cause Notice to be time barred.

4. Heard both Shri D.K. Deb, Assistant Commissioner, for the appellant & Shri Rajesh Chhibber, Advocate, for the respondent.

5. Having considered the rival contentions, I do not find any impropriety in the impugned Order-in-Original. Further, I also take notice that under similar facts and circumstances this Tribunal following the ruling of Hon'ble Madras High Court in the case of 'India Cement Ltd.', have held that Cenvat credit is allowable on the items in dispute in this appeal, in case of Sugar manufacturers. Accordingly, the appeal is bad both on merits and on limitation grounds. Thus, the appeal of Revenue is dismissed. The respondent-assessee will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

Sd/-

**(Anil Choudhary)**
**Member (Judicial)**

*Ansari*

प्रमाणित प्रति / Certified True Copy

28.12

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