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

Dated: 14/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70014/2016 SM dated 06/1/2016

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/383/2012	SIMBHAOLI SUGARS LTD (UNIT-BRIJNATPUR) HAPUR BULANDSHAHAR ROAD BRIJNATHPUR,GHAZIABAD

Name and Address of Respondent.	CCE, MEERUT II OPP SAHEED PARK(NEAR ASHOK KI LAT)DELHI ROAD, MEERUT

Other Appellants and Respondents as per Annexure

Copy To

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

4 Bar Association, CESTAT, Delhi
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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, I-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,Punjagutta 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.383/12

Arising out of OIA No.522-CE/MRT-II/2011 dated 28/10/2011 passed by the Commissioner (Appeals), Central Excise & Customs, Meerut.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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

M/s Simbhaoli Sugars Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Meerut II

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri Chatru Singh, Asstt.Commr. (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 06.01.2016

Final ORDER NO. 70014/2016

Per Mr. Anil Choudhary :

The appellant is a manufacturer of sugar molasses and rectified spirit as well as denatured spirit. This is an appeal against order in appeal dated 28/10/2011 passed by the Commissioner of Central Excise (Appeals), Meerut II. The appellant availed Cenvat credit of tax paid on inputs utilized for fabrication of machineries or capital goods. A show cause notice dated 16/6/10, was issued alleging therein that the appellant had taken Cenvat credit during the month of July,August 2008 and April 2009 on the items like ,MS plate, HR coils, and HR sheets and sections, et cetera. The SCN also mentioned that another show cause was issued for the period June 2006 to June 2008 as it appeared that the appellant had wrongly taken Cenvat Credit on iron and steel items including plates, coils, channels, HR plates et cetera. Accordingly, it was proposed to disallow the Cenvat credit of Rs.4,75,973/- under Rule 14 of CCR read with proviso to section 11A of the Act with further proposal to appropriate the amount already reversed along with interest and further penalty was proposed under Rule 15 of CCR read with section 11AC of the Act. The appellant appeared and contested the show cause notice, stating that they being a new unit were required to put up various manufacturing sections in the sugar Mill for which they procured capital goods as such and also procured materials/inputs for the fabrication of capital goods which were used in the factory for the manufacture of capital goods and further used for manufacture of taxable outputs like, sugar and molasses, denatured spirit et cetera. That some of the capital goods were required to be given support in order to function. So far Cenvat credit of Rs.1,41,247/- is concerned, the objection that the goods have been used in manufacture of exempted goods. It was explained by the appellant that the said items were used in the fabrication of Digester Tank and its shell. The said Tank was used to treat the sludge used for production of biogas (exempt). Bio gas is utilised by mixing with bagasse to run the boiler for manufacture of excisable goods . Only for the reason that the intermediate product i.e. biogas is not taxable, it does not mean that the goods have been utilized in the manufacture of capital goods which is utilised in manufacture of output exempted from duty. It is admitted case that no biogas is cleared or removed by the appellant and all such processes are essential for carrying of the manufacturing activity of excisable goods. The SCN was adjudicated vide order-in-original dated 28/6/11 whereby the proposed demands were confirmed and appropriated along with interest and further equal amount of penalty Rs.4,75,973/- was imposed in terms of Rule 15 of CCR read with section 11AC of the Act. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals).

2. Learned Commissioner (Appeals) took notice that the biogas generated from sludge in digestor tank, was utilised as fuel for running the boiler which is the main source of power to the plant and the distillery. As the revenue have not brought any evidence on record to show that there is removal of goods (Bio-gas) from the factory, he held that there was no scope for coming to the conclusion that the said

inputs were used in manufacture of exempted goods. It was also pleaded before the ld. Commissioner (Appeals) that tank itself is a capital goods as defined under Rule (a)(A)(vii) and therefore the Asstt. Commissioner have erred in holding that the credit is not available as disgester tank is utilized for exempted goods being Bio-gas. The ld. Commissioner (Appeals) upheld the disallowance of Cenvat credit save and except the credit on disgester tank (biogas) by further observing in favour of the appellant held that the issue is of interpretation in nature and accordingly, there is no element of fraud, collusion, willful mis-statement or suppression of facts et cetera and accordingly, was pleased to delete the penalty. Being aggrieved, the appellant have preferred appeal before this Tribunal.

3. The ld. Counsel for the appellant urges that as the revenue have not filed appeal against order of Commissioner (Appeals), on the basis of finding in the appellate order that that is no element of fraud mis-statement, et cetera, the proviso to section 11A (1) is not attracted and accordingly, extended period is not invocable in this case. As the whole demand is for the extended period, the impugned order is fit to be set aside. He further points out that from the show cause notice itself, it is evident that the revenue was aware with the taking of credit by the appellant and they have also issued another show cause notice for the immediate preceding period June,2006 to June,2008 and as such in view of the ruling of Honourable Supreme Court in the case of Nizam Sugar factory Vs. Collector of Central Excise : 2006 (197) ELT 465 (SC) wherein it was held that all the relevant facts were in the

knowledge of the authority when show cause notice was issued in such case, while issuing 2nd and 3rd show cause notice on similar facts, revenue cannot take the ground of suppression of facts on the part of the assessee.

4. The ld. AR for revenue relies on the impugned order. He further relies on the Division Bench ruling of this Tribunal in the case of Kripa Fabs Pvt. Ltd. Vs. Commr. of Central Excise, Chennai : 2011 (264) ELT 520 (Tri.-Chennai), wherein the matter is of SSI exemption when show cause notice was issued after two and half years from the date when the Department had information about suppression of facts by assessee,. It was held that the show cause was not barred by limitation as the assessee had failed to inform the revenue on crossing SSI limit, which was the obligation of the assessee. The ld.A.R. also relies on the ruling in the case of Commr. of Central Excise, Raipur Vs. Shri Bajrang Metallics Pvt. Ltd. : 2010 (258) ELT 250 (Tri.-Del.) wherein relying on the Larger Bench ruling of this Tribunal in the case of M/s Vandana Global Ltd. Vs. Commissioner : 2010 (253) ELT 440 (Tribunal-LB), it was held that Cenvat credit is not available on inputs utilized in manufacture of supporting structures.

5. Having considered the rival contentions, so far supporting structures are concerned, I find that the ruling in the case of Vandana Global has been distinguished by the Madras High Court and the Gujarat High Court and as such, is no longer good law. The Honourable High Court have held that when supporting structures are essential part of the machinery, in order to manufacture taxable output, the

Cenvat credit is available. Further, in view of the finding already Commissioner (Appeals) that there is no element of concealment or contumacious conduct on the part of the appellant and the issue is wholly interpretational in nature, and also in view of the fact that the revenue also had information of taking of Cenvat credit in view of the earlier show cause notice for the preceding period, I hold without entering into the merits, that the demand for extended period, cannot be sustained. Accordingly, I allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefit in accordance with law.

(Dictated and pronounced in the open Court)

mm

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
21.1.16
Asstt. Registrar
(C.E.S.T.A.T.)
28, M. G. MARG, ALLAHABAD-211001