REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 18/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70442/2016-EX[DB] dated 02/06/2016

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/650/2012	THE GENERAL MANAGER, THE SEKSARIA BISWAN SUGAR FACTORY LTD. BISWAN, DISTT. SITAPUR (U.P.)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

3Advocate(s) / Consultant(s):

KAPIL VAISH
2ND FLOOR, PART-A KRISHNA JANKI
PALACE, 35-C, RAMPUR GARDEN, CIVIL
LINES, BAREILLY, UP

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 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,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

E/650/2012 (DB)
Dated of Hearing/decision: 02/6/2016

[Arising out of Order-in-Appeal No.442-443-CE/LKO/2011 dated 29.12.2011 passed by Commissioner (Appeals) Customs & Excise, Lucknow]

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

The Seksaria Biswan Sugar Factory Ltd. Appellant

Vs.

C.C.E., Lucknow Respondent

Appearance:
Present for the Appellant: Shri Kapil Vaish (CA)
Present for the Respondent: Shri Pawan Kumar Singh (Superintendent) A.R.)

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70442/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the Seksaria Biswan Sugar Factory Ltd. against Order-in-Appeal No.442-443-CE/LKO/2011 dated 29.12.2011 passed by Commissioner (Appeals), Lucknow.

2. Brief facts of the case are that the appellant are engaged in the manufacture of Cane Sugar, Molasses etc. During the process Bagasse gets generated which does not attract any Central Excise duty. During the period from01.12.2009 to 31.3.2010 appellant sold Bagasse valued at Rs.6,57,34,890/-. Revenue issued them with a show cause notice No.82/ADC/LKO/2010 dated 02.08.2010 alleging that Bagasse being exempted, under Rule 6(3)(i) of Central Excise Rules, 2004, appellants were required to pay an amount of Rs.32,86,745/-. In addition, there were proposal in the said show cause notice in respect of interest and penalty. The said show cause notice was adjudicated through Order-in-Original No.166/ADC/LKO/CX/2010-11 dated 31.3.2011. The Original Authority as taken into consideration that the appellant had reversed Cenvat Credit of Rs.15,52,012/- attributable to the Cenvat credit availed in relation to said value of Bagasse and dropped the demand of Rs.32,86,745/-. Further he has ordered the appellant to pay interest of Rs.69,995/- and imposed penalty. Appellant preferred appeal before Commissioner (Appeals) who through impugned order-in-appeal decided the said appeal and upheld the Order-in-original by modifying it to the extent that he set-aside the penalty imposed through the said Order-in-Original dated 31.3.2011.

3. Aggrieved by the impugned order the appellant is before us. The contention of the appellant is that bagasse is waste or refuse or bye product generated in the manufacture of sugar and as provided at Para 3.7 of Chapter-V of supplementary instructions issued by CBEC Cenvat Credit is admissible on inputs even if the input is contain ed in any of the waste, refuse or bye product. The appellant prayed to set aside impugned Order-in-Appeal.

4. Heard the ld. Counsel for appellant. He has reiterated their contentions in the appeal Memorandum and submitted a copy of Apex Court Ruling in the case of Union of India Vs. DSCL Sugar Ltd. reported at 2015 (322) E.L.T. 786 (S.C.). He submitted that the Hon'ble Supreme Court in the said case has ruled that Bagasse is waste and not a manufactured product and Rule 6 of Cenvat Credit Rules is not applicable to Bagasse. He further prayed that the atributable credit of Rs.15,52,012/- reversed by them should be allowed to be recredited ~~recreated~~ and impugned order requiring them to pay interest of Rs.69,995/- be set-aside. Ld. Superintendent, A.R. reiterated submissions in the impugned order.

5. We have taken into consideration the rival submissions. We find that the issue is clearly covered by above cited Ruling of Apex Court. Therefore, we hold that Order-In-Appeal does not sustain to the extent that it required payment of interest of Rs.69,995/- by appellant. It is obvious that since Bagasse does not attract Cenvat Credit Rules, 2004, the appellant is entitled to take credit of Rs.15,52,012/- against the said debit. In above terms the appeal is allowed. Appellant is entitled to consequential relief. No costs.

(Dictated and pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy

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