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

Dated: 29/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70081/2016 DB&MISC ORDER NO 70091/2016** dated 23/02/2016

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/MISC/657/2007	E/883/2007DB	U.P.STATE YARN CO LTD VILLAGE-SIDDIQUEPUR, SHAHGANJ ROAD DISTT- JAUNPUR(UP)-122601
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE,ALLAHABAD 38,M.G.MARG, CIVIL LINES, ALLAHABAD(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH SHUBHAM AGRAWAL,ADV
11, LIDDLE ROAD
GEORGE TOWN,
ALLAHABAD(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

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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

Application No. E/Misc/657/2007
Ex. Appeal No. E/883/2007 (DB)

Arising out of Order-in-Appeal No. 1/CE/ALLD/2007 dated 4.1.2007 passed by Commissioner (Appeals) of Customs & Central Excise, Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

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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U.P. State Yarn Co. Ltd. ...APPELLANT(S)

VERSUS

Comm. of Central Excise, Allahabad RESPONDENT (S)

APPEARANCE

Shri Shubham Agrawal, Advocate, for the Appellant
Shri Pawan Kumar Singh, Superintendent (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 23.2.2016

Final ORDER NO. 70081/2016
MISC. ORDER No. 70091/2016

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

Per Ashok K. Arya:

Both sides have been heard extensively.

2. The appellant-assessee has filed a miscellaneous application praying that some necessary additional documents may be taken on record. The said additional documents have been permitted to be taken on record by allowing the miscellaneous application..

3. The issue concerns here demand of duty of central excise in respect of the discounts offered by way of commissions/incentives/trade discounts etc. to the Consignment Agents for sale of synthetic yarn by the appellant-assessee viz. M/s. U.P. State Yarn Co. Ltd., an Undertaking of the Government of Uttar Pradesh. The Revenue issued a show cause notice dated 5.8.2005 to the appellant-assessee asking them that why a duty amounting to Rs.1,86,796/- short paid in case of the goods cleared through consignment agents during the period of July 2000 to August 2002 not be paid by them.

4. The appellant-assessee represented by learned Advocate, Mr. Shubham Agrawal, mainly argues that they had already informed the Department of Central Excise regarding sales

being made by them through consignment agents; it was also in the knowledge of the department as they had sent letters to the Superintendent of Central Excise that they were selling their goods viz. synthetic yarn through consignment agents. Such letters/declarations were received by Inspector of Central Excise, Range Sector II, Jaunpur on 7.7.2000 and on 26.9.2000. The learned Advocate also mentions that they had given pricing pattern of their goods, wherein cash discounts and trade discounts/turnover discounts/incentives were mentioned as Annexure D to their letter dated 21.9.2000, which was received by Inspector of Central Excise on 26.9.2000. The learned Advocate mainly argues that as the facts were in the knowledge of the Central Excise department, which is supported by the correspondence mentioned above, for any duty liability the Revenue cannot invoke five-year period which is applicable only in case of willful misstatement and suppression of facts, fraud etc. with intention to evade payment of duty of central excise as covered by the provisions mentioned in the Proviso to Section 11A of the Central Excise Act, 1944. He argues that when there was no suppression of facts with intention to evade payment of duty, Proviso to Section 11A of the Central Excise Act cannot be invoked and demand cannot be issued against them beyond the period of one year. He says here the period involved for the demand is July 2000 to August 2002 and their unit was audited from 23rd to 27th September 2002 and for the demand of duty in question, the show cause notice was issued on 5.8.2005; therefore this demand is not sustainable as it is time-barred.

4.1 The learned Advocate also cites the following case laws in support:-

(i) *CCE&ST* vs. *Triveni Engineering & Industries Ltd.* reported in 2015 (317) ELT 408 (All.);

(ii) *Jayant Juneja* vs. *CCE, Jaipur* reported in 2015 (326) ELT 634 (SC);

(iii) *CCE, Chandigarh* vs. *Pawan Engineering Works* reported in 2013 (288) ELT 322 (SC).

5. The Revenue represented by learned AR, Shri Pawan Kumar Singh, mainly argues that this is a case where the assessee did not give declaration as required under the new amended Rules, i.e. Valuation Rules, which were amended in July 2000. He says that the assessee did not declare to the department that they were selling their goods through consignment agents, who were being given incentives and commissions on the sale. He says these discounts are not

trade discounts, they are actually the commissions on the sales made by respective consignment agents, therefore, they are not covered under the concept of trade discount and they have to be included in the value of the goods and duty has to be charged by including the said commissions.

5.1 The learned AR cites the following case laws in support:-

(i) *CCE, Surat-I* vs. *Neminath Fabrics Pvt. Ltd.* reported in 2010 (256) ELT 369 (Guj.);

(ii) *CC&CE, Ghaziabad* vs. *Rathi Steel & Power Ltd.* reported in 2015 (321) ELT 200 (All.);

(iii) *LÓreal India Pvt. Ltd.* vs. *CCE, Pune-I* reported in 2015 (330) ELT 253 (Tri.-Mumbai).

6. We have carefully considered all the facts on record and the submissions of both the sides. We find that this is a case where certain discounts, which have been named by the assessee by different names like cash discounts/trade discounts/turnover discounts/incentives and which the Revenue is naming as commission on sales, are to be included or not to be included in the value of the goods for the purposes of duty of central excise.

6.1 The main argument by the appellant-assessee is that the show cause notice has been issued beyond the period of one year i.e. after the expiry of period of one year from the relevant date, when relevant date is the date of filing RT-12 with the department and RT-12 is to be filed in the subsequent month from the close of the month, by 10th day of the month. It is to be noted that wherever there is suppression of facts or willful misstatement of facts or any fraud is involved with intention to evade payment of duty, the department can issue demand and recover the duty short paid and not paid within the period of five years from the relevant date. The appellant has argued that all the facts were known to the department and there was no any willful concealment of the facts by the assessee in respect of the discounts in question.

6.2 The Revenue has argued that it was the responsibility of the assessee to give clear-cut declarations when Valuation Rules were amended in July 2000. However, on record we find that there have been letters written to the department and some other correspondence addressed to the department, wherein the appellant mentioned their marketing pattern, their marketing agencies, pricing pattern and in the annexures they have mentioned the list of depots, names of the consignment agents, names of dealers and the details of various discounts being offered (like cash discount, trade discount, turnover discount, incentives). When these facts especially in respect of various kinds of discounts and the sales being made through consignment agents were known to the department in the year 2000 itself, how the department can say that the assessee suppressed certain relevant facts from the Department and the assessee could be issued the demand of duty beyond the normal period of one year under Proviso to Section 11A of the Central Excise Act. In the face of clear-cut facts on record mentioned above, we do not find sufficient force in the argument of the Revenue that there was suppression on the part of the assessee, who are an Undertaking of the Government of Uttar Pradesh. In other words, the Revenue has failed to substantiate their argument that there was wilful misstatement or suppression of facts on the part of the appellant-assessee.

6.3 The Revenue has cited various case laws saying that facts on record warrant invocation of extended time i.e. beyond the period of one year saying that there was suppression of facts and deliberate undervaluation of goods. We have not found on record the said suppression of facts in respect of the discounts in question and consequently there is no deliberate undervaluation on the part of assessee established. Therefore, the case laws cited by the learned AR on behalf of the Revenue will not be applicable and cannot support the case of the Revenue, when the facts are otherwise.

6.4 We find that when the department has issued show cause notice covering the period well beyond the period of one year, as in this case the show cause notice is dated 5.8.2005 and period of demand is July 2000 to August 2002 and audit was done during 23rd to 27th September 2002, the demand (being for the period beyond the period of one year) cannot be sustained, when there has not been any clear-cut suppression of facts on the part of the appellant-assessee. In this regard we find sufficient support from the Hon'ble Supreme Court's decisions in the cases of *Pawan Engineering Works* (supra) and *Jayant Juneja* (supra) and the Hon'ble Allahabad High Court's decision in the case of *Triveni Engineering & Industries Ltd.* (supra), wherefrom it is clear that unless suppression of facts is on record, there cannot be any demand issued to an assessee beyond the period of one year; in other words, Proviso to Section 11A of the Central Excise Act, 1944 cannot be invoked in such a situation.

7. When the appeal has been found to be successful mainly on the plea that the demand has not been found valid as the period involved is beyond one year, there is no warrant to further discuss the merits of the demand.

8. Considering the above discussion and analysis, the appeal is allowed.

(Pronounced in the open Court)

Sd/-
(ASHOK K. ARYA)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)