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: 28/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70896/2016-SM[BR] dated 08/04/2016

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/50409/2015	KISAN SAHKARI CHINI MILLS LTD SATHA,ALIGARH UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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Copy To

3Advocate(s) / Consultant(s):

Vikrant Kackria
KAKARIA & ASSOCIATES,
SCF-55, 2nd FLOOR, SECTOR 8,
PUNCHKULA, HARYANA

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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.E/50409/2015-[SM]

Arising out of Order-in-Appeal No.193/CE/LKO/2014 dated 13.10.2014 passed by Commissioner (Appeals) Customs, Central Excise & S. Tax, Luckow.

For approval and signature:

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

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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 Kisan Sahkari Chini Mills Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Lucknow

...RESPONDENT (S)

APPEARANCE

Shri Jatin Mahajan, Advocate for the Appellant (s)
Shri Rajiv Ranjan Joint Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 08.04.2016

FINAL ORDER NO.- 70896/2016

Per Mr. Anil Choudhary :

The appellant, M/s Kisan Sahkari Chini Mills Ltd., is in appeal against the Order-in-Appeal No.193/CE/LKO/2014 dated 13.10.2014 passed by Commissioner (Appeals) Customs, Central Excise & S. Tax, Luckow.

2. The brief facts of the case are that the appellant is manufacturer of sugar and molasses falling under chapter head 17011190 and 17031000 of the schedule to the Central Excise Tariff Act, 1985 as well as exempted Bagasse falling under Chapter Sub-head 223032000 of the schedule to the Central Excise Tariff Act, 1985. The appellant is also availing CENVAT Credit under Cenvat Credit Rules, 2004. It was observed that the appellant are using common inputs in the manufacture of dutiable and exempted final products. The appellants are not maintaining separate accounts for receipt, consumption and inventory of inputs for use in the manufacture of exempted final products, they were required to pay an amount equal to 10% of the price of the exempted final products. A show cause notice was issued to the appellant vide C. No.V930 Demand/KSM/Alg./74/2009/1133-34 dated 13.05.2009 demanding recovery of Rs.79,728/- under Rule 14 of the Cenvat Credit Rules 2004 read with Section 11A of Central Excise Act, 1944 and interest payable under Section 11AB of the Act. Proposal for imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 was also made. Observing the principles of natural justice the impugned order dated 19.01.2010 was

passed by the Assistant Commissioner, Central Excise Division, Aligarh confirming the demand of Rs.77,406/- under Section 11A (1) of Central Excise Act 1944 read with Rule 14 of Cenvat Credit Rules, 2004 along with interest under Section 11 AB of the Central Excise Act, 1944 and imposing penalty of Rs.5000/- under Rule 15(i) of Cenvat Credit Rules, 2004. The appellant preferred an appeal before the Commissioner (Appeals), Central Excise, Lucknow who vide his order-in-appeal No.421/LKO/2010 dated 29.11.2010 dismissed the appeal on the ground that the appeal has been filed beyond the statutory period of 60 days from the date of communication of the order and no reasons for delay have been furnished.

3. Heard the parties.

4. Having considered the rival contentions and having gone through the evidences on record, I find that the issue of reversal of Cenvat, on bagasse have been decided in favour of assessee by the Apex Court in U.O. India Vs/ DSCL Sugar Ltd. reported at 2015(322) E.L.T. 769 (S.C.) dated 24.07.2015. Accordingly, the Appeal is allowed subject to payment of cost of Rs.10,000/- to be paid in 'Prime Minister's National Relief Fund'. Compliance is to be filed on or before 18.11.2016.

(Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

25.10.16

सहायक पंजीकार / Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001