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: 24/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/70681/2016-CU[DB]** dated **12/08/2016**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 ST/Stay/50808/2014	ST/50646/2014	**WAVE INDUSTRIES PVT LTD** (FORMERLY KNOWN AS UPSSC LTD) UNIT-BULANDSHEHAR, PANNI NAGAR, BULANDSHEHAR, UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

AALOK ARORA, ADVOCATE
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/50646/2014-CU[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/153/13-14 dated 30/07/2013 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

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

M/s. Wave Industries Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, C.E. & S.T., Noida **Respondent**

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 12/08/2016
Date of Decision : 12/08/2016

Final ORDER NO. 70681/2016......

Per: Anil Choudhary

The appellant, M/s. Wave Industries Pvt. Ltd., is a manufacturer of Sugar and Molasses. Pursuant to audit, the Superintendent of Central Excise vide his letter dated 24.06.2008 demanded payment of Service Tax on the transport charges incurred by the appellant for transportation of sugarcane from the 'Cane Collection Center' to their Sugar factory. The appellant immediately took a stand by their reply dated 31.03.2008 that Service Tax is not payable, and no consignment note is issued ~~by~~ to the Sugar factory and further the transporter is not a goods transport agency but they are individual truck owner. Further facts are that thereafter, show cause was issued on 03.04.2012 that is after almost a period of 4 years. The show cause was adjudicated on contest and the proposed demand was confirmed vide Order-in-Original dated 21.01.2013. Being aggrieved through the said order, appellant had preferred appeal before the Learned Commissioner (Appeals), who vide the impugned Order, was pleased to dismiss the appeal.

2. Being aggrieved the appellant is before this Tribunal, ld. Counsel on behalf of appellant urges that the demand is bad as under the facts and circumstances, extended period of limitation was not invokable. Secondly, on merits the transporters or individuals, who ~~would not~~ used their own trucks and not issued any consignment note or GR. Further, it was obligation of the farmer to deliver the sugarcane at

their factory gate. The appellant have only facilitated the farmer in carrying ~~carried out~~ the Sugarcane from the farm collection centre to the factory and such transport cost is adjusted in the price to be paid for the sugar Cane. Accordingly, he prays for allowing the appeal with consequential benefits.

3. Learned A.R. for revenue relies on the impugned order.

4. Having considered the rival contentions, I hold that there being no suppression or contumacious conduct on the part of the appellant, Thus, the extended period of limitation is not invokable. Secondly, on merits also, I hold that the appellant have only facilitated the farmer in transport of the sugarcane to their factory gate, which was otherwise the obligation of the farmer. Accordingly, I hold that no Service Tax was payable on the transport charges incurred by the appellant under the facts and circumstances. Thus, the appeal is allowed. The impugned order is set aside. The appellant will be entitled to consequential ~~continental~~ benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

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