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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70096/2017-EX[DB] dated 16/01/2017

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/2298/2009	SAF YEAST CO. PVT. LTD. 419, SWASTIK CHAMBERS, CHEMBUR, MUMBAI- 400071.
		Name and Address of Respondent
2		C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

3Advocate(s) / Consultant(s):

D. H. Nadkarni,Adv
12-14,DR.SUNDERLAL
B.MARG,(GOA STREET),
NEXT TO REX CHAMBERS,
BALLARD ESTATE,
MUMBAI,
MAHARASHTRA
400038

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2298/2009-EX[DB]

(Arising out of Order-in-Original No. 03/Commissioner/LKO/CX/2009 dated 15/04/2009 passed by Commissioner of Central Excise, Lucknow)

M/s Saf Yeast Co. Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Lucknow	**Respondent**

Appearance:

Shri D. H. Nadkarni, Advocate,	for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR),	for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 16/01/2017

FINAL ORDER NO. 70096/2017

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Saf Yeast Co. Pvt. Ltd., against Order-in-Original No. 03/Commissioner/LKO/CX/2009 dated 15/04/2009 passed by Commissioner of Central Excise, Lucknow.

2. Brief facts of the case are that the appellant, M/s Saf Yeast Co. Pvt. Ltd., were engaged in the manufacture of Yeast classifiable under Tariff Item No. 21022000 of the schedule to Central Excise Tariff Act, 1985. The goods manufactured by the appellant were exempted from complete duty of Excise through Notification No.3/2006-CE dated 01/03/2006. It

appeared to Revenue that Cenvat credit involved on the inputs lying in the stock, on inputs in the finished goods lying in the stock, and credit involved on the inputs in-process in the factory as on 28/02/2006 and Cenvat credit on capital goods in the stock as on 28/02/2006 respectively amounting to Rs.48,90,461/-, Rs.3,36,172/-, Rs.1,95,380/-, Rs.1,88,2012/- were not admissible to the appellant. It also appeared to Revenue that Cenvat credit of Rs.2,27,130/- availed by appellant after 28/02/2008 was also not admissible to the appellant. Therefore, a Show Cause Notice No. 15/Commissioner/LKO/2006-07 dated 28/02/2007 was issued to appellant wherein it was stated that the closing balance of Cenvat credit as on 28/02/2006, as per account maintained under Rule 9 of Cenvat Credit Rules was nil. Through the said Show Cause Notice appellants were called upon to show cause as to why Cenvat credit of Rs.58,37,355/- should not be recovered from them under rule 14 of Central Excise Rules, 2004. The appellants submitted before the Original Authority that it is provided ~~produced~~ under sub-rule (1) of Rule 6 Cenvat Credit Rules, 2004 that if the inputs are received by the factory of manufacture for used in the manufacture of exempted product then ~~thus~~ the Cenvat credit of duty paid on such input was not admissible and contented that the Cenvat credit availed was on such inputs which were brought into the factory when the final product was dutiable. ~~Though~~ The Original Authority did not appreciate the contentions and confirmed the demand and imposed penalty of equal amount. Aggrieved by the said order appellant is before this Tribunal.

3. The appellant contended that in so far as the credit of amount except for Rs.2,27,130/-, is concerned the credit was availed on inputs and capital goods which were brought into the factory for utilization of the same in or in relation to manufacture of final product attracting Central Excise duty. Therefore, under the said Sub-rule (1) of Rule 6, the same cannot be reversed or recovered. They have also relied on ruling by Hon'ble Supreme Court of India in the case of Collector of Central Excise, Pune *Versus* Dai Ichi Karkaria Ltd. reported at 1999 (112) E.L.T. 353(S.C.) and contended that Hon'ble Supreme Court of India in the said case has ruled that reversal of credit by Excise Authorities is permissible only when credit is taken illegally or irregularly and contended that in the present case the show cause notice could not establish that the said credit was taken irregularly except for credit of Rs. 2,27,130/-.

4. Heard the ld. D. R. who has supported the impugned Order-in-Original.

5. Having considered the rival contentions, we find that Hon'ble Supreme Court of India in the case of Dai Ichi Karkaria in Para 17 has ruled as follows:-

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the Excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of Excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."

We find that the above ruling has ruled that there is no co-relation of raw material and final product. Further the Hon'ble Supreme Court has held that there cannot be reversal of credit unless it is irregularly taken. The said Show Cause Notice has not made any allegation in respect of credit except credit of Rs.2,27,130/- that the credit was taken irregularly.

Therefore, we find that Cenvat credit except Rs.2,27,130/- was not liable to be recovered. Therefore, we hold that the impugned Order-in-Original is sustainable to the extent of denial of Cenvat Credit for Rs2,27,130/- and remaining part of the said order is set aside including penalty on the appellant. The impugned Order-in-Original is modified to that extent. In above terms, we partially allow the appeal. The appellant shall be entitled for consequential relief, if any, as per law.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
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