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: 13/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70545/2017-SM[BR] dated 26/05/2017

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/2344/2009	**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): SH D.H. NADKARNI,ADV
12-14,DR.SUNDERLAL B.MARG
(GOA STREET), NEXT TO REX CHAMBERS
BALLARD ESTATE, MUMBAI-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/2344/2009-EX[SM]

(Arising out of Order-in-Appeal No. 105-CE/LKO/2009 dated 11/05/2009 passed by Commissioner of Central Excise & Customs (Appeals), 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 Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 26/05/2017

FINAL ORDER NO. 70545/2017

Per: Anil G. Shakkarwar

The present appeal is filed by M/s Saf Yeast Co. Pvt. Ltd. against Order-in-Appeal No. 105-CE/LKO/2009 dated 11/05/2009 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The brief facts of the case are that the appellant - M/s Saf Yeast Co. Pvt. Ltd. was engaged in the manufacture of Yeast. Yeast was fully exempted through Notification No. 3/2006-CE dated 01/03/2006. On 07/03/2006 Officers of Central Excise Division, Sitapur visited the factory premises

of the appellant. As per the direction of Superintendent of Central Excise (Preventive) appellant paid Rs.47,49,715/- under protest through TR-6 Challan No. 12/2005-06 dated 22/03/2006 and the same was debited by PLA Entry No. 34-35 dated 22/03/2006 respectively through Cenvat credit of Central Excise duty paid on the inputs lying in the stock and inputs in work in progress as on 01/03/2006. Subsequently through letter dated 06/03/2007 they submitted application for refund of the said amount of Rs.47,49,715/- to Superintendent of Central Excise, Range Hardoi. On 09/04/2007 the said Superintendent return the claim to the appellant with a direction to resubmit the same to Assistant Commissioner, Central Excise, Sitapur Division. Accordingly, on 30/04/2007 the said claim was once again submitted to Assistant Commissioner, Central Excise, Sitapur Division. The appellants were issued with a Show Cause Notice dated 03/08/2007 wherein it was contended that the appellant did not follow the procedure setout for payment of duty under protest. Further, it was contended in the said Show Cause Notice that appellants were not entitled to utilize Cenvat credit on the inputs lying in the stock and inputs in work in progress as on 01/03/2006 and therefore, the said refund was inadmissible to them. The said application for refund claim was decided through Order-in-Original No. 25-AC/STP/Refund/2008 dated 18/07/2008. The ld. Original Authority has held that the appellant were not entitled to said Cenvat credit and therefore, rejected the refund claim. Aggrieved by the said Order-in-Original dated 18/07/2008 the appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 105-CE/LKO/2009 dated 11/05/2009. The ld. Commissioner (Appeals) has rejected the appeal filed by appellant holding that the refund claim filed by the appellant was filed after expiry of one year from the relevant dated and therefore the said refund claim was hit by limitation. Aggrieved by the said Order-in-Appeal dated 11/05/2009 appellant has filed this appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that with effect from 01/03/2006, the goods manufactured by them were fully exempted under Notification No. 3/2006-CE dated 01/03/2006. He, further, submitted that Rs.47,49,715/- was paid under protest through TR-6 Challan No. 12/2005-06 dated 22/03/2006 and the same was debited by PLA Entry No. 34-35 dated 22/03/2006 respectively. The said amount was claimed as refund. Simultaneously, on 28/02/2007 a Show Cause Notice was issued to them directing them to reverse Cenvat credit attributable to inputs lying in the stock and inputs in work in progress as on 28/02/2006. He, further, submitted that the said amount Rs.47,49,715/- was paid under protest on 22/03/2006 towards the same liability impressed upon them

by Superintendent of Central Excise (Preventive). He, further, submitted that the said Show Cause Notice dated 28/02/2007 has resulted in Order-in-Original No. 03/Commissioner/LKO/CX/2009 dated 15/04/2009 passed by Commissioner of Central Excise, Lucknow. He, further, submitted that this Tribunal through its Final Order No. 70096/2017 dated 16/01/2017 has held that the Cenvat credit of Rs.48,90,461/- availed on inputs lying in the stock and inputs in work in progress as on 28/02/2006 was admissible to them. He, further, submitted that Rs.47,49,715/- is included in that amount of Rs.48,90,461/-. He further contended that since the amount paid by them was not required to be paid and finally this Tribunal has held that the said Cenvat credit was admissible to them. Therefore, they are entitled to the said refund.

4. Heard the submissions of the ld. D. R., who has supported the impugned Order-in-Appeal dated 11/05/2009.

5. Having considered the rival contentions and on perusal of the facts on record, I find that through above stated Final Order No. 70096/2017 dated 16/01/2017 this Tribunal has held that the appellants were entitled to Cenvat credit of Rs.48,90,461/- that was involved in the inputs lying in the stock and inputs in work in progress and inputs in the final product lying in the factory as on 28/02/2006. Therefore, I find that the amount of Rs.47,49,715/- paid under protest by appellant on 22/03/2006 was not towards any duty adjudged

against the appellant by any competent authority. The said amount was neither the duty liability arising out of manufacture nor arising out of any confirmed demand. Therefore, the said amount was Revenue deposit with Revenue. Since the demand raised in respect of said issue amounting to Rs.48,90,461/- does not survive as on date in view of this Tribunal's Final Order No. 70096/2017 dated 16/01/2017 the exchequer does not have right to keep the said amount with it. I, therefore, allow the appeal and direct the Jurisdictional Commissioner to ensure payment of refund of Rs.47,49,715/- within 30 days of receipt of copy of this order. In above terms appeal is allowed with consequential relief to the appellant.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Cerified True Copy
16/06/2017
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