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

Dated: 05/05/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70163/2016 SM dated 25/4/2016

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/50777/2015	SIMBHAOLI SUGAR LTD UNIT-BRIJNATHPUR, BULANDSHAHAR-HAPUR ROAD DISTT-GHAZIABAD
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, MEERUT I OPP CCS UNIVERSITY, MANGAL PANDEY NAGAR, MEERUT I

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH KAMALJEET SINGH,ADV
J-144, PATEL NAGAR I
GHAZIABAD(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.26), 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 C.I.A.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONEL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/50777/2015(SM)

(Arising out of Order-in-Appeal No. APPEALS-1,MRT/HPR/58/14-15 dated 30/12/2014 passed by Commissioner of Central Excise (Appeals), Meerut-I)

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. Simbhaoli Sagar Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Hapur **Respondent**

Appearance:

Shri Kamal Jeet Singh, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt. (AR), for Respondent

CORAM:

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

Date of Hearing : 25/04/2016
Date of Decision : 25/04/2016

Final ORDER NO. 70163/2016

Per: Anil Choudhary

The appellant a manufacturer of V.P. Sugar and Molasses, manufactures Sugar both from Sugar Cane as well as Raw Sugar which is imported. The raw sugar when arrived at the Port in loose form, in containers, was accordingly packed in the P.P. Bags to facilitate transportation to the factory. The appellant took Cenvat credit on the P.P. Bags. In the course of audit, revenue objected that the talking of credit and the appellant reversed the credit so taken, under protest, amounting to Rs.6,55,944/- on 30/08/10 and Rs.2,81,253/- on 22/12/2012, totaling Rs.9,37,197/-. Subsequently, the appellant filed a refund claim of Rs.9,37,197/- on 01/05/2014. The revenue issued a show cause notice dated 22/07/14 as it appeared that the refund claim is bad as the credit on the P.P. Bags used for transporting of raw sugar to the factory is not available, as the same has been used outside the factory, and some bags which get damaged during handling in godown are replaced. The appellant appeared and contested the show cause notice and the same was adjudicated vide O-I-O dated 08/08/2014, disallowing the claim, observing that imported sugar was in bulk form and same was packed in P.P. Bags in the godown situated outside the premises or factory and as packed or bags used outside the factory, the credit is not allowable. The appellant preferred an appeal before the learned Commissioner, (appeal), who vide the impugned order have rejected and upholding the findings of the Assistant Commissioner, relying on the ruling of this tribunal in the case of Ponni Sugars Ltd. Versus Commissioner of C. Ex. 2008 (227) E.L.T. 115 (Tri.-Chennai).

2. Being aggrieved by the appellant is in appeal before this tribunal on the ground that the packing cost includes the cost of P.P. Bags, and forms component of the raw material and that is raw sugar. As such the learned Commissioner has erred in disallowing the Cenvat credit on part of the cost of raw material, which is not tenable. He further argues that it is not disputed that raw sugar was imported in the loose & bulk form and the same have been packed in P.P. Bags for transportation to the factory of production. Thus packing cost is akin to or part of transport cost of the raw material and the same forms part of the cost of input or raw sugar, used in the manufacture of final taxable product being refined Sugar and Molasses. Accordingly, he prays for allowing the appeal with consequential benefits.

3. The learned AR for revenue relies on the impugned order. He further relies on the ruling in the case of Ponni Sugar Ltd. (supra) and Universal Cables Ltd. v. CCE 2003 (159) ELT 661 (tri. - SMB).

4. Having considered the rival contentions, I find that packing cost of raw sugar for transportation from the Port of Import, to the factory of production, is an element of cost of the raw material and as such forms part of the input cost. Further I find that it is not disputed that such input or raw sugar have been utilized in the manufacture of taxable outputs. So far the ruling of the coordinate of this Tribunal in the case of Ponni Sugars Ltd. and Universal Cables Ltd. is concerned, I find that both these

rulings what has weighed with the Honorable single member is that the cost having been incurred outside the factory of production whereas cost is allowable with respect to inputs and expenses incurred in the factory of production. I hold both these rulings to be per in-curium as they have not considered the principle of costing wherein packing cost of raw material forms part of the input price of the raw material, which is a direct cost for the manufacture of excisable output. Accordingly, the appeal is allowed with consequential benefits. The adjudicating authority is directed to grant the refund as per rules with interest within a period of 60 days from the date of receipt of a copy of this order.

(Dictated in Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)