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: 27/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70403/2017-SM[BR] dated 30/03/2017

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/70824/2016	**Anil Sethi Manager (commercial)** C/o Sinbhaoli Sugar Ltd,brijnathpur HAPUR UP
		Name and Address of Respondent
2		-CCE, Hapur OPPOSITE SHAHEED PARK, DELHI ROAD, MEERUT 0 UP-

Copy To

3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
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.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/70824/2016-EX[SM]

(Arising out of Order-in-Appeal No.HPU/EXCUS/000/APPEALS-I/58/2016-17 dated 10/05/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

Anil Sethi Manager (commercial) **Appellant**

Vs.

Commissioner of Central Excise, Hapur **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 30/03/2017
Date of Decision : 30/03/2017

FINAL ORDER NO.-70403/2017........

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Appeal No.HPU/EXCUS/000/APPEALS-I/58/2016-17 dated 10/05/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut.

2. The issue in this appeal filed by the employee of M/s Simbhaoli Sugar Ltd. is that, whether the penalty imposed on him of Rs.03 Lakhs under Rule 26 of Central Excise Rules, 2002 have been rightly imposed and confirmed by the impugned Order-in-Appeal.

3. The learned Counsel for the appellant has taken me through the facts on record. As per the facts- in the course of inspection on 04th October, 2013 by the inspection team of the Department, certain shortages were found in the stock of sugar. On the date of inspection, statement of Mr. Anil Sethi, the appellant herein, who was the Manager Commercial and Authorized Signatory for the compliances under the Central Excise, was recorded under Section 14, wherein he admitted the shortage, as found by the inspection team and also signed on the calculation sheet prepared by the inspection team. On being further question, for the reasons of the shortage, he explained that it is not possible for him to ascertain the reasons immediately. However, he agreed to debit the duty involved on the shortage found. Further facts, as per the impugned order are that thereafter the management of the sugar unit made enquiries and in the course of such inquiry they found other officers of the unit involved in mis-chief and/or stealing, including one Mr. G.S.C. Rao the Chief Executive Officer and Managing Director of the concerned unit. I further find from the impugned order that it is alleged that the appellant herein was fully responsible for day-to-day work of the Central Excise and Service Tax of the Company, which includes maintaining records and issuing invoices. He had dealt with the goods which had been removed clandestinely without payment of duty, as such the goods are liable to confiscation and accordingly

penalty was imposed on him. Learned Counsel for the appellant have urged that there is no allegation in the show cause notice that Mr. Anil Sethi was in charge of the stock or godowns where sugar was stored and he could have removed the sugar clandestinely. Thus, the penalty is imposed on presumption and the same is fit to be set aside.

4. The learned A.R. for revenue relies on the impugned order.

5. Having considered the rival contentions, I am satisfied that there is no serious allegation of any malfeasance and/or dereliction of duty on the part of the appellant herein. The appellant was basically concerned with the maintenance and compliance of the Central Excise records. Such duties do not include verification of stock on day-to-day basis. In this view of the matter, the penalty imposed is not tenable.

6. Accordingly, I allow the appeal and set aside the penalty imposed. The appellant will be entitled for consequential benefits, if any.

(Dictated in Court)

-Sd/-

(ANIL CHOUDHARY)

Member(JUDICIAL)

प्रमाणित प्रति/Certified True Copy
08/05/2017

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

okp