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: 21/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71501/2017-SM[BR] dated 16/11/2017

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/1346/2011	**SIMBHAOLI SUGAR MILLS LTD.,** SIMBHAOLI, DISTT. GZB (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s):

Kapil Vaish
2nd floor, Part-A Krishna Janki Palace, 35-C, Rampur Garden, Civil Lines, Bareilly, 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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/1346/2011-EX[SM]

(Arising out of Order-in-Appeal No. 39-CE/MRT-II/2011 dated 28/02/2011 passed by Commissioner of Customs & Central Excise (Appeals), Meerut-II)

The Simbhaoli Sugar Mills Ltd. **Appellant**

Vs.

Commissioner of Customs & Central Excise, Meerut-II **Respondent**

Appearance:

Shri Anil Sethi (Manager Commercial) Representative, for Appellant
Shri Pradeep Kumar Dubey, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing & Date of Decision : 16/11/2017
FINAL ORDER NO...71501/2017..........

Per: Archana Wadhwa

After rejecting the request for adjournment, I proceed to decide the appeal by hearing the ld. A. R.

2. As per the facts on record, the appellants are engaged in the manufacture of sugar and with the permission of the Commissioner, have a godown outside their factory premises for storage of the non-duty paid sugar. On the expiry of the permission, an extension was sought by the appellant, which the Commissioner rejected. As the appellant had given security at the time of maintaining the said godown, for the purpose of storing of the non-duty paid sugar, the said security was encashed by the Revenue and credited to the Government Account.

3. However, subsequently another representation was made by the appellant, which was accepted by the Commissioner and the extension was granted. The effect of the same is that the appellant was entitled to maintain the godown outsider their factory premises for storing of the non duty paid sugar. At the time of the extension granted by the Revenue, a fresh security was given by the appellant.

4. As a consequence, they became entitled to refund of their amount which was encashed by the Revenue. They, accordingly, took credit of the same in their PLA, after intimating their Jurisdictional Central Excise Authorities.

5. In the above background, the proceedings were initiated against them for confirmation of the said re-credit on the sole ground that the appellant has availed the same *suo-moto,* instead of applying for the refund. The appellant took stand that on refusal of grant of extension, the non duty paid stock of the sugar stored in the outside of the godown of the factory premises, would become duty paid on account of encashment of the guarantees. As such, if the refund of the same was not admissible to them, the sugar stored in the outside godown of the factory premises, is deemed to be duty paid and there was no further requirement to pay duty, thus making the entire situation as Revenue Neutral.

6. The above pleas were not accepted by the Authorities below, who confirmed the demand. However, ld. Commissioner (Appeals) set aside the penalty.

7. I find that the only ground on which the demand is being confirmed against the assessee is that instead of taking the re-credit *suo-moto,* they should have applied for the refund under the provisions of Section 11B of the Central Excise Act, 1944. However, I find that there is no dispute about the fact that at the time of further extension of the permission to maintain an outside godown, a fresh security was given by the assessee and as such the earlier security encashed by the Revenue was to be refunded to them. It is also seen that the credit entry was made by the appellant in their PLA under intimation to the Revenue. Such intimation can be deemed to be a claim for refund and if the Revenue was not happy with the same, they could have initiated the proceedings at that point of time itself.

8. The technicalities adopted by the Revenue for denial of the refund, which is in any case due to the assessee, cannot be appreciated. Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated & Pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
12/12/17
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