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: 12/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71203/2017-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/1412/2011	NANGGANJ SIHORI SUGAR CO LTD Dariyapur, P.O.Munshiganj, Raebareli(UP)
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

3Advocate(s) / Consultant(s):

MS.STUTI SAGGI
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal No. E/1412/2011-EX(SM)

[Arising out of Order-in-Appeal No. 49-CE/LKO/2011 dated 04/03/2011 passed by Commissioner (Appeals) Customs & Central Excise Lucknow]

Nangganj Sihori Sugar Co Ltd. Appellant

Vs.

C.C.E., Lucknow Respondent

Appearance:
Present for the Appellant: Ms. Stuti Saggi, Advocate
Present for the Respondent: Shri Pawan Kumar Singh (Superintendent) (AR)

Coram: **Hon'ble Shri Anil Choudhary, Judicial Member**

Date of Hearing/Decision: 30.3.2017

FINAL ORDER NO. 71203/2017

Per: Anil Choudhary

The appellants are manufacturers of sugar. The period of dispute is for October and November, 1997. During this period, in terms of the policy of the Central Government and orders issued in this regard, the appellant had cleared certain quantity of sugar out of 'free sale sugar quota' as 'levy sugar' on payment of Central Excise Duty applicable to levy sugar. This quantity of the free sale sugar had been diverted as levy sugar on loan basis. Subsequently, the diversion of the free sale sugar as levy sugar on loan basis during October and November, 1997 was converted by the Central Government into purchase of free sale sugar and the appellant were paid differential amount alongwith the differential duty. The differential duty was paid by the Appellant of Rs.1,99,551/- on 5/6.11.2001. On 12.12.2001, the department issued a show cause notice for charging of interest on the differential duty under section 11AB and imposition of penalty under section 11 AC. The jurisdictional Assistant Commissioner vide Order-in-Original dated 08.08.2005 confirmed the interest demand under section 11 AB and also imposed penalty of Rs.1,99,551/- equal to the differential duty under section 11AC. On appeal being filed to Commissioner (Appeals), Commissioner (Appeals) vide order in appeal dated 04.3.2011 set aside the penalty but confirmed the interest demand under Section 11AB. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Ms. Stuti Saggi, Advocate, the ld. Counsel for the appellant, pleaded that since the clearances had been made during October and November, 1997 period in respect of which differential duty had been paid on 5/6.11.2001, and since in this case the alleged short payment was not due to any fraud, wilful misstatement, suppression of fact etc. on the part of the assessee, the interest liability under section 11AB would not arise, as during the period prior to 11.5.2001, the interest liability under Section 11 AB arose only in those cases where the short levy / non-payment or erroneous refund of duty was on account of fraud, wilful misstatement, suppression of fact or deliberate violation of Provisions of Central Excise Act, 1944 or of the Rules made there under with intent to evade payment of duty, that Sub-Section (2) of section

11AB clearly states that the provisions of sub-section (1) shall not apply to the cases where the duty had been paid before the date on which the Finance Bill, 2001 received the assent of the president, that is, during the period prior to 11.05.2001. That in any case, since the SCN had been issued on 12.12.2001 i.e. after expiry of one year from the date of payment of duty and since longer limitation period is not applicable, in these circumstances the interest demand is time barred. That the limitation period prescribed in Section 11A is applicable for demand of interest also in terms of the judgement of the Honble Delhi High Court in the case of Hindustan Insecticides Ltd. Vs. CCE, LTU reported in 2013 (297) ELT 332 (Del.) and that in view of this, impugned order upholding the interest demand under section 11AB is not sustainable.

4. Shri. Pawan Kumar Singh, the ld. AR defended the impugned order reiterating the findings of the Commissioner (Appeals).

5. I have considered the submissions from both the sides and perused the records.

6. From the circumstances of the case, the alleged short payment cannot be said to be attributable to any fraud, wilful misstatement, suppression of facts or deliberate violation of the provisions of the Central Excise Act, 1944 or of the Rules made there under with intent to evade payment of duty. During the period prior to 11.05.2001, the levy of interest under section 11AB was linked with the short levy, non-payment or erroneous refund being on account of fraud, wilful

misstatement suppression of facts etc. Since these elements are not present in this case and since for this reason only, the Commissioner (Appeals) has set aside the penalty under section 11AC, there would not be any interest liability in this case, as the alleged short payment is in respect of the clearances made prior to 11.05.2001. Moreover, since the elements for invoking longer limitation period under proviso to Section 11A (1) are not there, in any case, the interest demand made after expiry of one year from the relevant date is time barred, in view of the Honble Delhi High Court in the case of Hindustan Insecticides Ltd. (supra). The impugned order is, therefore, not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in the Open Court)

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

(K. Gupta)

प्रमाणित प्रति/Certified True Copy
25/10/17
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