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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 09/11/2017

To

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

Final Order No. A/71316/2017-EX[DB] dated 05/10/2017

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/2648/2011	**SAF YEAST CO. PVT. LTD.** 419, SWASTIK CHAMBERS, CHEMBUR, MUMBAI.
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

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

BIPIN GARG (ADVOCATE)&
ANAND BHATTACHARYA.
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

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

APPEAL No. E/2648/2011-EX[DB]

(Arising out of Order-in-Appeal No. 187-CE/LKO/2010 dated 16/08/2011 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Lucknow)

Saf Yeast Co. Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Bipin Garg (Advocate) & Shri Anand Bhattacharya (Advocate) for Appellant

Shri Mohd Altaf (Asst.Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 05/10/2017
Date of Decision : 05/10/2017

FINAL ORDER NO: 71316/2017..........

Per: Anil G. Shakkarwar

Present appeal is directed against Order-in-Appeal No. 187-CE/LKO/2010 dated 16.08.2011 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow.

2. Brief facts of the case are that the appellant were manufacturing 'Yeast' falling under Chapter sub-Heading No. 2102.10 of schedule to Central Excise Tariff Act, 1985. The

appellant were clearing goods manufactured by them from their factory at Sandila to their various depots spread all over the country. They were paying duty on the goods being transferred to their depots on the value prevailing at the time of removal of the goods at the factory gate. It appeared to Revenue that the prices at which the goods were sold from respective depots should be the price to be considered to arrive at transaction value. Therefore, for the period from October, 2004 to February, 2006 a show cause notice dated 01.10.2009 was issued to the appellant invoking the proviso to sub Section (1) of Section 11A of Central Excise Act, 1944 demanding differential Central Excise Duty of Rs. 28,77,744/-. The appellant contested the show cause notice stating that the demand was barred by limitation. They submitted that earlier similar show cause notice was issued for the period from July, 2000 to October, 2001. During the hearing they submitted that Department had already issued three show cause notices to them on the same issue, hence the allegations of suppressions do not survive and contended that in view of ruling of Hon'ble Supreme Court in the case of Nizam Sugar Factory v/s CCE reported at 2006(197) ELT 465 SC. The Original Authority did not appreciate the ground to put forth and confirmed the demand and imposed equal penalty through Order-in-Original dated 06.08.2010. Aggrieved by the said order the appellant preferred appeal before Commissioner (Appeals). Learned Commissioner

(Appeals) decided appeal through impugned Order-in-Appeal. The appellant submitted before the learned Commissioner (Appeals) that the Department was having full knowledge of the procedure adopted by them for valuation of their goods manufactured by them and that Department had issued two show cause notices dated 13.10.2005 and 15.12.2006 on the issue and, therefore, the present show cause notice is hit by limitation in view of the ruling of the Hon'ble Supreme Court in the said case of Nizam Sugar Factory. The learned Commissioner (Appeals) has set aside the said Order-in-Original dated 06.08.2010 and remanding the matter back to the Original Authority for denovo adjudication after getting differential duty recalculated in the light of observations made by him in the said impugned Order-in-Appeal. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the learned counsel for the appellant who has reiterated the submissions before the Original Authority and learned Commissioner (Appeals) stating that on the same issue two show cause notices were issued in the past and on the same set of information the present show cause notice is issued by invoking proviso to sub Section (1) of Section 11A of Central Excise Act, 1944 for extended period of limitation for issue a show cause notice for 5 years. He has submitted that in view of the ruling of Hon'ble Supreme Court in the above

stated case of Nizam Sugar Factory show cause notice dated 01.10.2009 is not sustainable.

4. Heard the learned AR who has agreed that the case is squarely covered by the ruling of Hon'ble Supreme Court in the case of Nizam Sugar Factory.

5. Having considered the contentions from both the sides, we find that the contention of the learned counsel for the appellant that earlier two show cause notices were issued on the same issue and this being third show cause notice on the same issue and that the third show cause notice issued on the same set of facts by invoking proviso for extension of time limit is contrary to the ruling by Hon'ble Supreme Court in the case of Nizam Sugar Factory. We, therefore, hold that the said show cause notice dated 01.10.2009 is not sustainable. Therefore, we set aside the impugned Order-in-Appeal. As a consequence the Order-in-Original dated 06.08.2010 does not survive in law. Appeal is allowed, appellant shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

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

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

Ankit

प्रमाणित प्रति/Certified True Copy
04/12/12
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