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: 12/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70953/2017-SM[BR] dated 06/09/2017

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/70527/2016	**Baghauli Sugar & Distillery Ltd** Bikapur, HARDOI U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

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
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 06/09/2017.
DATE OF DECISION : 06/09/2017.

Excise Appeal No. 70527 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 308-CE/APPL-LKO/ LKO/2016 dated 21/04/2016 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

M/s Baghauli Sugar & Distillery Ltd. — Appellant

Versus

CCE & ST, Lucknow — Respondent

Appearance

Shri Aalok Arora, Advocate – for the Appellant.

Shri Pawan Kumar Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 70953/2017 Dated : 06/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein the demand of interest has been confirmed against the appellant by invoking extended period of limitation.

2. The brief facts of the case are that during the course of audit conducted for the period October 2006 to March 2011 in

November 2011, it was pointed out to the appellant that they have taken inadmissible Cenvat credit on certain items which is required to be reversed and on pointing out by the audit, the appellants reversed Cenvat credit and intimated thereof. Thereafter, a show cause notice was issued to the appellant on 18/11/2013 to demand interest for the intervening period by invoking extended period of limitation. The matter was adjudicated, the demand of interest was confirmed. Aggrieved from the said order appellant is before me.

3. The learned Counsel for the appellant submits that during the intervening period, the appellant was having sufficient balance in their Cenvat account and have not utilised the Cenvat credit which has been not admissible to them and the same has been reversed. Therefore, they are not liable to pay interest. They also contended that the show cause notice is barred by limitation in light of the decision of the Hon'ble High Court of Punjab & Haryana in the case of **Jai Bharat Maruti Ltd. vs. CCE, Delhi – III** reported in **2014 (307) E.L.T. 282 (P&H)**, therefore, the impugned order is to be set aside.

4. On the other hand, learned AR submits that there is no time limit prescribed for payment of interest in the statutory book. Moreover, the appellant is required to pay interest automatically they have reversed the Cenvat credit which has been taken by them which is not admissible to them.

5. Heard the parties considered the submissions.

6. On merits, it is the contention of the appellant that they were maintaining sufficient balance in their Cenvat credit account and this fact is required to be ascertained. If the appellant is maintaining sufficient balance in their Cenvat credit account, in that circumstances, the appellant is not liable to pay interest in the light of the decision of Hon'ble High Court of Karnataka in the case of **CCE vs. Bill Forge Pvt. Ltd.** Reported in **2012 (279) E.L.T. 209 (Kar.)** for the intervening period. Further, I find that the show cause notice has been issued to the appellant by invoking extended period of limitation to demand interest whereas the audit took place in the month of November 2011 and the appellant has reversed the Cenvat credit in November and December 2011. Admittedly, the show cause notice has been issued by invoking extended period of limitation and the Hon'ble High Court of Punjab & Haryana in the case of **Jai Bharat Maruti Ltd.** (supra) has held that to demand interest on differential duty, the show cause notices required to be issued within the period of limitation, i.e. one year. Therefore, relying on the decision of Hon'ble High Court of Punjab & Haryana in the case of **Jai Bharat Maruti Ltd.** (supra), I hold that the show cause notice is not sustainable as same is time barred.

7. In that circumstances, demand of interest is not sustainable against the appellant, therefore, the impugned order is set aside.

8. Consequently appeal is allowed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK

Member(Judicial)

प्रमाणित प्रति/Certified True Copy

21\09\17

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
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38, M. G. MARG, ALLAHABAD-211001