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

Dated: 11/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70885/2017-CU[DB] dated 29/08/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/117/2009	**Simbhaoli Sugar Ltd** Simbhaoli GHAZIABAD UP 010204
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD,,BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs. Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No: ST/117/2009-CU [DB]

(Arising out of Order-in-Appeal No. 297-ST/MRT-II/2008 dated 30/12/2008 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

M/s Simbhaoli Sugar Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-II **Respondent**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (AC), AR for Respondent

CORAM:

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

Date of Hearing : 29/08/2017
Date of Decision : 29/08/2017

FINAL ORDER NO.-70885/2017

Per: Anil Choudhary

Heard the parties.

2. The issue involved in this appeal is with regard to levy of service tax paid on transportation of sugarcane from the cane collection centre to the sugar mill, initially paid by the appellant sugar mill but deducted from the price of the sugarcane, payable to the farmer on the basis of an average rate. The issue herein has been squarely decided in favour of the appellant in earlier appeal between the parties vide Final Order No. ST/A/50679-50681/2014-CU[DB], dated 30/01/2014 reported at 2014 (34) S.T.R. 850 (Tri.-Del.), wherein under same facts circumstances deciding in favour of

the appellant, this Tribunal held when the transporter did not issue consignment notes or GRs or Challlans or any documents containing the particulars, in Explanation to Rule 4B of Service Tax Rules, 1994, the transporters cannot be called Goods Transport Agency and, hence, in the appellant's case the service of transportation of sugarcane provided by the transporter would not be covered by Section 65 (105) (zzp). Accordingly, this Tribunal held that there will be no service tax liability on the appellant sugar mill as they have not received the service from a Goods Transport Agency. In view of this, Tribunal set aside the orders in the earlier appeal allowing the appeal. We also take notice of the fact that under the purchase agreement and the relevant State Act, the price fixed by the State Government of Uttar Pradesh to the farmers for the purchase of sugarcane includes the cost for delivery of sugarcane by the farmer to the sugar mill. Thus, we hold that the actual recipient of the transportation service is the farmer and not the sugar mill, when admittedly transport cost has been recovered from the price of the sugarcane payable to the farmer. In view of this matter, we allow the appeal and set aside the impugned order. The appellant shall be entitled for consequential benefit, in accordance with law.

(Dictated & Pronounced in Court)

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

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

Lks

प्रमाणित प्रति/Certified True Copy
14/09

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