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

Dated: 12/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70143/2018-EX[DB] dated 03/01/2018

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/1205/2012	**Mankapur Chini Mills** Vill. & P.o. Datauli, Teh. Mankapur, Distt. Gonda (U.P.)
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To

3Advocate(s) / Consultant(s):

Ms. RINKI ARORA.
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/1205/2012-EX[DB]

(Arising out of Order-in-Appeal No. 15/CE/APPL/ALLD/2012 dated 13/02/2012 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s Mankapur Chini Mills **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Ms. Rinki Arora (Advocate) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 03/01/2018
Date of Decision : 03/01/2018

FINAL ORDER NO- 70143/2018

Per: Archana Wadhwa

After hearing both the sides duly represented by Ms. Rinki Arora (Advocate) and Shri Mohd. Altaf (Asstt. Commr.). We find that the appellant was engaged in manufacture of Sugar and Molasses as also Denatured Alcohol. During the course of manufacture of Denatured Alcohol, Carbon Di Oxide Gas (Co_2) come into existence, which was initially being vented out by the appellant. However during the period relevant for the purposes of the present appeal i.e. from April, 2010 to December, 2010, the appellant sold Carbon Di Oxide (CO_2) without payment of duty.

2. In view of the above background, proceedings were initiated against the appellant by way of issuing a show cause notice dated 04/05/2011 proposing to confirm the demand of Rs.3,46,206/- on the Carbon Di Oxide (CO_2) Gas, cleared by them. The notice culminated into an order passed by the Original Adjudicating Authority confirming the demand along with interest and imposing penalty of identical amount. The said order of Lower Authorities stands confirmed by Commissioner (Appeals).

3. The appellant have taken a categorical stand before the authorities that they are not engaged in the manufacture of Carbon Di Oxide (CO_2) inasmuch as the same came into existence as a byproduct during the course of manufacture of Denatured Spirit. We also note that the demand stands confirmed against the appellant @10% of the sale value of the same in terms of provisions of Rule 6 of Central Excise Rule. The Hon'ble High Court of Bombay in the case of Rallis India Ltd. Vs. Union of India – 2009 (233) E.L.T. 301 (Bombay) has set aside the order of the Larger Bench of the Tribunal and has held that the provisions of payment of a particular percentage of the value of the exempted product in terms of the erstwhile Rule 57CC of Central Excise Rule would not apply to the exempted byproducts. We also take note of

Hon'ble Supreme Court decision in the case of Union of India Vs. Hindustan Zinc Ltd.- 2014 (303) E.L.T. 321 (S.C.), laying down that unintended byproduct, which emerge during the course of manufacture of the final product, would not call for payment of any particular percentage of the value of the same in terms of erstwhile Rule 57CC. We note that the present provision of Rule 6(3) are *pari metere* to Rule 57CC of erstwhile Central Excise Rule and as such, ratio of law declared in the said decisions would fully apply.

4. By following the above decisions, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated & Pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Lks

प्रमाणित प्रति/Certified True Copy

21/02/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38 एम.जी.मार्ग, इलाहाबाद-211001
38 M.G. MARG,ALLAHABAD-211001