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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. **E/4127 – 4128 /2010-SM[BR] E / STAY /4022-4023 /2010 –SM[BR]** Date **15/04/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :

1. **SAF YEAST CO. PVT LTD**
2. **SAF YEAST CO. PVT. LTD.**

419, SWASTIK CHAMBERS, CHEMBUR, MUMBAI.
400071

SAF YEAST CO. PVT LTD Appellant
Vs
C.C.E. LUCKNOW Respondent

am directed to transmit herewith a certified copy of **Final order No.188-189/2011-SM[BR]&S/139-140/2011** Dated4.3.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.DURGESH NADKARNI, ADVOCATE
12/14, DR. SUNDERLAL B. MARG, (GOA STREET) NEXT TO REX CHAMBERS
BALLARD ESTATE, MUMBAI-400038.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 4127 -4128 of 2010-SM(BR)
With Excise Stay Application No. 4022-4023 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 304 & 306-CE/LKO/2010 dated 29.9.2010 passed by the Commissioner of Central Excise (Appeals), Lucknow]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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M/s. Saf Yeast Co. Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Lucknow — Respondent

Appearance:

Shri D. H. Nadkarni , Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 4.3.2011

Final **ORDER** - 188-189/2011 SM(BR) &
S-139-140/2011 SM (BR)

Per Ashok Jindal:

The appellants have filed these appeals along with stay applications against the impugned orders. The learned advocate for the appellants submits that in Appeal No. 4127/2010, out of total demand of duty of Rs.1,56,683/-, the appellants paid Rs.80 621/- before the Commissioner (Appeals). He also submitted that the demand are raised for interest on delayed payments and denial of Cenvat credit used for construction of foundation of molasses tanks embedded to earth.

Cenvat credit on mobile / fixed phone installed at their head office during the period 2004-2005 and 2005-2006 was also denied. He submitted that the show case notice is based on audit objection, as per annexure to the show cause notice, the invoices of insurance/ travel expenses tax etc. are also included and the whole of the demand has been raised for denial of Cenvat credit on mobile / fixed phone. Therefore, the show-cause notice is defective. This needs examination by the lower authorities. He further submitted that in this case, extended period of limitation has been invoked, as the show cause notice has been issued on 19.11.08 based on audit report which was conducted in their factory from 14.9.06 to 16.9.06. As the denial of Cenvat credit was a disputed by the revenue before this Tribunal and there are conflicting views on the issue, therefore by relying on the decision of the Continental Foundation Jt. Venture vs. Commissioner of

Central Excise, Chandigarh-I reported in [2007 (216) ELT 177 (SC)] the extended period of limitation is not invokable. This contention has not been considered by the lower authorities.

2. In Appeal No. 4128/2010, the credit on sections, plates, joints, channels was denied as they have been used for manufacturing of the structures which are embedded to earth, which were used in molasses' tanks which were embedded to earth. In that case also he submitted that lower authorities have invoked extended the period of limitation. He further submitted that in this case also there were conflicting views taken by this Tribunal. Therefore, the extended period of limitation is not invokable and the same has not been considered by the lower authorities. In view of the submissions, learned advocate submitted that matters may be remanded back to the adjudicating authority to consider the issue afresh and pass the appropriate order.

3. Heard and considered. Taking note of the contentions raised by the learned advocate, I find that the lower authorities have not considered the issue of limitation (in the facts and circumstances of these cases) whether the extended period of limitation is applicable or not? Further, the invoices against which the denial of Cenvat credit on mobile/ fixed phone was denied to the appellants, same needs examination as the invoices as per the annexure A to the audit report are having the invoice of insurance / travel expenses etc. Therefore, considering the fact that appellants have made a pre-deposit of Rs.80,621/- in Appeal No. E/4127/10 and Rs.51,474/- in Appeal No.

E/4128/10 and same is sufficient in compliance to section 35F of the Central Excise Act, 1944, after waiving the condition of pre-deposit of remaining duty, interest and penalty, I take up the appeal also for disposal at this stage with the consent of both the sides.

4. As discussed above, the adjudicating authority as well as lower appellate authority have not considered the submissions of the appellants including the issue whether the extended period of limitation is applicable or not and also have not examined the invoices against which the demand has been raised. Therefore, matter needs fresh examination by the adjudicating authority. In that event, it would be appropriate and in the interest of justice to remand the matter back to the original authority and to pass afresh order after giving reasonable opportunity to the appellants to present their case.

5. The appeals are allowed by way of remand and stay applications are also disposed of in the above manner.

(Ashok Jindal)
Member(Judicial)

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