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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**

Date **27/12/2011**

Appeal No. **E/2120/2011 – SM[BR] E/ STAY / 2791 / 2011-SM[BR]**

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

To:
**M/S BASTI SUGAR MILLS CO. LTD.**
**P.O. SUGAR FACTORY, DISTT. BASTI (U.P) -272003.**

**M/S BASTI SUGAR MILLS CO. LTD.** Appellant

Vs

**C.C.E ALLAHABAD** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 938/2011-SM[BR]&S/889/2011** dated 15.12.2011 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 ALLAHABAD**
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
**MR.PRADEEP KUMAR MITTAL ADV.**
171-CHITRA VIHAR DELHI-110092

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

## WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

## COURT NO. II

**E/Stay/2791 of 2011-SM in &**
**Central Excise appeal No. 2120/2011-SM**

[Arising out of Order-in-Appeal No. 100/CE/APPL/ALLD/2011 dated 20.07.2011 passed by the Commissioner (Appeals), Central Excise, Allahabad].

**Date of Hearing/decision: 15th December, 2011**

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

| | | |
|---|---|---|
| 1 | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | |

M/s. Basti Sugar Mills Co. Ltd., Appellant

Vs.

CCE, Allahabad Respondent

Present for the Appellant : Shri P.K. Mittal, Advocate
Present for the Respondent : Mrs. R. Jagdav, S.D.R.

**Coram: Hon'ble Shri D.N. Panda, Judicial Member**

**FINAL ORDER NO.** 938/2011 SM (BR) &
S-889/2011 SM (BR)

**Per D.N. Panda:**

Learned Counsel submits that Cenvat credit is admissible but under confusion reversal and restoration thereof was done. When it was finally conceived that credit is admissible the appellant enjoyed it suo moto. Such practice is only questioned by Revenue. While calling for disallowance of Cenvat credit there is also levy of penalty. The disallowance in this case is Rs. 75,200/- with equal amount of penalty. Shri Mittal, ld-counsel says that mere disposal of stay application shall not serve useful purpose of law without disposal of appeal.

2. Learned D.R. on the other hand, supports the order of the authority below.

3. Heard both sides and perused the record.

4. Admissibility of credit is not disputed by Revenue. It is only the volatile practice that is questioned. It may be appreciated that a practice not known to law, if adopted, certainly causes difficulty to tax administration. To deter recurrence of unknown practice to be adopted, if the appellant faces penalty of Rs. 5000/- that shall meet end of justice. Consequently, disallowance of Cenvat credit is reversed with levy of penalty of Rs. 5000/-. Appeal meets this end. In view of the aforesaid conclusion, stay application also gets disposed allowing the appeal partly.

(Pronounced in the open Court)

**(D.N.PANDA)**
**JUDICIAL MEMBER**

RK