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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/1213/2008 – SM[BR] Date 23/11/2010

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

To :
M/S SIMBHAOLI SUGARS LTD.
DISTILLERY DIVISION,P.O.SIMBHAOLI .DISTT.
GHAZIABAD

M/S SIMBHAOLI SUGARS LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1291 / 2010-SM[BR] dated 9.11.2010 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,GHAZIABAD.
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.1213/08-SM

(Arising out of order in appeal No.39/CE/MRT.11/08 dated 25.2.2008 passed by the Commissioner of Central Excise (Appeals), Meerut-II)

Date of Hearing: 9.11.2010

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? No
3. Whether Their Lordships wish to see the fair copy Of the order? No
4. Whether Order is to be circulated to the Departmental Authorities? Yes

M/s Simbhaoli Sugars Ltd — Appellants

Vs

CCE, Meerut-II — Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Shri S.K. Bhaskar, DR

Coram: **Hon'ble Mrs. Archana Wadhwa ,Member (Judicial)**

Final ORDER - 1291/2010 SM(BR)

Per Archana Wadhwa:

The appellants have made a prayer to dispose of the appeal on merits. Accordingly, I have heard Shri S.K. Bhaskar, learned DR and have gone through the impugned order.

2. As per facts on record, the appellants availed excess modvat credit to the tune of Rs.13,868/- during the month of February, 2006. The said credit was availed by them on the basis of invoice dated 13.2.06. Further, credit of Rs. 2600/- was availed in the service tax matters against the improper documents. On being pointed out by the audit, the said credits were subsequently reversed on 13.11.06, without disputing the admissibility of the same.

3. Subsequently, proceedings were initiated against them vide show cause notice dated 24.7.07 for payment of interest. The appellant contended that as the said credit so availed by them, was not utilized and was lying in their books of account, they were not liable to pay any interest on the same. For the above proposition, they relied upon the Tribunal's decision in the case of Maruti Udyog Ltd Vs Commissioner reported in 2006 (196) ELT 323 as also of the decision in the case of CCE Vs Gupta Steel reported in 2006 (205) ELT 24 (Guj).

4. The above plea was considered by the Commissioner (Appeals) who held against them and confirmed the interest by observing that the provisions of Rule 14 of Cenvat Credit Rules, 2004 provided for charging of interest on amount of inadmissible credit even if the same was not utilized. Accordingly, he upheld the confirmation of interest against the appellants. Hence the present appeal.

5. I find that the law is no more res integra. The Tribunal's decision in the case of Maruti Udyog Ltd relied upon before the Commissioner (Appeals) stand confirmed by the Hon'ble Punjab & Haryana High Court as reported in 2007 (214) ELT 173 (P&H), when

the appeal field by the Commissioner of Central Excise, Delhi was rejected.

6. Further, the appeal filed by the Commissioner against the order before the Hon'ble Supreme Court stands dismissed by the Apex Court in the case reported in 2007 (214) ELT A-50.

7. I also find that the Hon'ble High Court of Gujarat judgment in the case of CCE Vs Gupta Steels (supra) is also to the effect that interest is not to be levied on amount of credit directed to be reversed when such credit was lying unutilized in the assessee's account. In as much as, the issue stands settled by the above referred decisions, I set aside the impugned order and allow the appeal with consequential relief to the appellants.

(ARCHANA WADHWA)
Judicial Member

MPS*