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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/406 /2008 – SM[BR]** Date **24/06/2011**

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
M/S U.P.STATE SUGAR CORPN. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 340 / 2011-SM[BR]** dated 14.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S U.P.STATE SUGAR CORPN. LTD.
JARWAL ROAD,DISTT.
BAHRAICH. (U.P.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. 406 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 187-CE/ALLD/2007 dated 25.10.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad (UP)]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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?	:	Yes
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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Commissioner of Central Excise. Allahabad — Appellants

Vs.

M/s. U.P. State Sugar Corporation Ltd. — Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
Ms. Sukriti Das and Shri Mayank Garg, Advocate for the Respondent

Final

Date of Hearing/decision : 14.6.2011

ORAL ORDER NO. 340/2011 SM(BR)

Per M. Veeraiyan:

1. Heard both sides. Vide Order in original No. 22/demand/2006 dated 27.10.09, the original authority confirmed the demand of Rs.4,99,118/- along with interest and imposed penalty of Rs.5000/- under Rule 27 of the Central Excise Rules, 2002.

2. The party filed an appeal against the order of the original authority confirming the demand and imposing penalty which was disposed of by the Commissioner (Appeals) vide order in appeal No. 25/CE/ALLD/07 dated 31.1.07 setting aside the duty demand and penalty. Against the said order, the department filed an appeal before the Tribunal which stands dismissed vide Final Order No. 224-225/09 SM(BR) dated 17.3.09 in E/A.No. 1163-1164/2007

3. Against the very same order of the original authority dated 27.10.06, the department also filed an appeal on the ground that the original authority having confirmed the demand should have imposed penalty under section 11A C instead of imposing penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules. Commissioner (Appeals) vide impugned order No. 187/CE/APPL/Alld/07 dated 25.10.07 rejected the departmental appeal after taking note of the fact that the order of the original authority already stands set aside and order of the original authority stands merged with the earlier order of the Commissioner (Appeals) dated 31.1.07.

4. I find that the order of the original authority demanding duty along with interest and imposing penalty of Rs.5,000/- stands totally set

aside by the Commissioner (Appeals) and appeal against the said order to the Tribunal by the department also stands rejected. Under these circumstances, the question of entertaining appeal by the Tribunal against the order dated 25.10.07 of the Commissioner (Appeals) rejecting the appeal seeking enhancement of penalty imposed by the original authority cannot be entertained.

5. The appeal is disposed of.

(M. Veeraiyan)
Member(Technical)

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