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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. ST/1647/2010 - CU[DB] Date **13/09/2011**
ST/S/3515/2010

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

To :
M/S THE OUDH SUGAR MILLS LTD.

HARGAON, SITAPUR (UP)

M/S THE OUDH SUGAR MILLS LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/469/ **2011 CU[DB]** dated 09.09.2011

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/644/2011

Assistant Registrar
(Customs Appeal Branch)

Copy to :

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

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

ST/Stay No.3515/2010 in ST/Appeal No.1647/2010

(Arising out of order in appeal No.230/ST/LKO/2010 dated 31.8.2010 passed by the Commissioner of Central Excise (Appeals), Lucknow)

Date of Hearing: 19.8.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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 would 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?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Oudh Sugar Mills Ltd — Appellant

Vs

CCE,Lucknow — Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Shri Sonal Bajaj, DR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Stay order No. ST/644/11
Final ORDER ST/469/11

Per Archana Wadhwa:

On matter being called, neither anybody appeared nor there is any adjournment request in spite of the representative of the appellant having accepted the notice for today's hearing on the last date of hearing.

2. Accordingly we have heard the learned DR Shri Sonal Bajaj and have gone through the impugned order.

3. After going through the impugned order, we find that the Commissioner (Appeals) has dismissed the appeal for non-compliance of the ~~said~~ stay order passed by him directing the appellant to deposit 25% of the service tax and penalty amount. Apart from noticing that such stay order was passed ex-parte without affording any opportunity of hearing to the appellant, we also note that the subsequent modification application filed by the appellant stands disposed of by the Commissioner (Appeals) in the impugned order, rejecting the modification application as also dismissing the appeal for non-compliance on the same date itself.

4. In any case, we note that the disputed issue i.e. whether the appellant is entitled to discharge its service tax liability on GTA services received by him, in cash or the same can be discharged from Cenvat credit, stands decided in favour of the appellants by the Hon'ble Punjab & Haryana High Court in the case of CCE Chandigarh Vs Nahar Industries reported in 2010-TIOL-868-HC-P&H-ST. In as much as, the issue is covered in favour of the appellant by the above

referred judgment of the Hon'ble High Court, we dispense with the condition of pre-deposit of duty and penalty.

5. As the appeal has not been decided by the Commissioner (Appeals) on merits, we set aside the impugned order and remand the matter for decision on merits without insisting on any pre-deposit. The stay petition and appeal is disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Judicial Member

(MATHEW JOHN)
Technical Member

MPS*