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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/1186/2011 - EX[DB]
E/S/1517 /2011 -EX (DB)

Date **27/03/2012**

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

To :
M/S SIMBHAOLI SUGARS LTD.,
UNIT BRIJNATHPUR GHAZIABAD (U.P.)

M/S SIMBHAOLI SUGARS LTD., Appellant

Vs

C.C.E. MEERUT II **Stay order No.509/2012-EX (DB)** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 365 / 2012 EX[DB] dated 22-3-2012 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise 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 SH. ANIL SOOD, ADV. C/O
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-3
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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision :22.03.2012

Excise Stay Application No.1517 of 2011/and in
Appeal No.1186 of 2011

[Arising out of Order-in-Appeal No.27-CE/APPL/MRT-II/2011 dated 31.01.2011 passed by the Commissioner (Appeals), Central Excise, Meerut-II].

M/s. Simbholi Sugars Ltd. ...Appellant

Vs.

CCE, Meerut-II ...Respondent

For approval and signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance:
Shri Anil Sood, Advocate for the appellant.
Shri Bharat Bhushan, AR for the respondent.

CORAM : Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

STAY order No. 509/2012-EX(BR)
FINAL Order No. A/365/2012-EX(BR)

Per Justice Ajit Bharihoke:

This appeal is directed against the order of the Commissioner (Appeals) dated 31.1.2011, whereby he partly accepted the appeal against the Order-in-Original and while waiving the penalty, he confirmed the demand of Rs.16,36,592/- with interest thereon.

2. It is submitted by the ld. Counsel for the appellant that the impugned order is not sustainable under the law because the Adjudicating Authority as well as the Commissioner (Appeals) have ignored the fact that the bio-gas produced from the sludge, which is waste generated in the manufacture of sugar, was an inter-mediatory product and which was actually used in turbine for generating electricity for manufacture of sugar in the factory. Both the Adjudicating Authority and the Commissioner acted on the premise that bio-gas is an exempt product, therefore, duty paid on capital goods i.e. digester tanks and other components are meant for storing and treating the sludge.

3. Ld. Departmental Representative has fairly conceded that the aforesaid issue raised by the Counsel for the appellant has not been dealt

with by the Revenue Authorities. Since Adjudicating Authority or Appellate Authority have failed to deal with crucial issue raised by the assessee, it would be in the interest of justice if the appeal is accepted and the matter is remanded back to the Adjudicating Authority for fresh decision on the aforesaid issue.

4. In view of the above, the appeal is accepted and the matter is remanded back to the Adjudicating Authority with the direction that he will consider the submission of ld. Counsel for the appellant that bio-gas produced by treatment of sludge and digester tanks, being an intermediatery product, which is actually used in the turbine for manufacture of electricity meant to be used for production of sugar, the expense incurred on digester tanks and other components ought to be treated as inputs on capital investment for production of the main product – sugar. Appeal as well as stay application are accordingly disposed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.