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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/1307/2012-EX[DB],

Dated: **17/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
The Oudh Sugar Mills Ltd
Hargaon, Sitapur(up)

The Oudh Sugar Mills Ltd (Appellant)

VS

C.C.E. & S.T.-Lucknow (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. 816/2012-**EX[DB]** dated **12/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,226001

2. Advocate(s) / Consultant(s):

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

Date of Hearing/ Decision12.07.2012

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

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?	

Excise Appeal No. E/1307 of 2012-Excise

(Arising out of Order-in-Appeal No76-CE/LKO/2012 dated 27.02.102 of the Commissioner of Central Excise (Appeals), Lucknow).

CC, Lucknow ...Appellants

Vs.

M/s. Oudh Sugar Mills Ltd. ...Respondent

Appearance:

Shri Nagesh Pathak,AR for the appellant.
None for the respondent.

Coram : Hon'ble Justice Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. A/816/2012-EX(BR)

Per Rakesh Kumar:

In this case, the respondents are manufacturer of sugar and molasses and had availed of duty paid on CTD Bars, TMT, M.S. Bars, Welding Electrodes, Cement and Light Fittings, etc. The cenvat credit availed was Rs.10,10,212/- for the period October, 2007 to December, 2007. The Addl. Commissioner vide order-in-original dated 30.10.2009 disallowed the cenvat credit and confirmed the demand on the ground that these items have been used for erection of structures fixed to the earth and as such, they are neither inputs nor capital goods. The Addl. Commissioner besides confirming the cenvat credit also demanded interest and imposed penalty of equal amount on the respondent under Rule 15 of the Cenvat Credit Rules. On appeal, the Commissioner (Appeals) while upholding the cenvat credit demand along with interest, set aside the penalty on the ground that during the period of dispute, there were conflicting decisions on the issue involved in this case. Against this decision of the Commissioner (Appeals), Revenue is in appeal challenging the Commissioner (Appeals)'s order setting aside the penalty.

2. None present for the respondent. Heard Shri Nagesh Pathak, Authorised Representative for the Department, who assailed the impugned order reiterating the grounds of appeal in the revenue's appeal.

3. We have carefully considered the submission of ld. Authorised Representative for the department and have perused the records. We are of the view that during the period of dispute, there were conflicting decisions on the issue involved in this case till it was settled by the judgement of Larger Bench of the Tribunal in the case of Vandana Global Ltd. Vs. CCE, Raipur reported in 2010 (253) ELT 440 (Tribunal-LB). We are, therefore, of the view that in the circumstances of the case, imposition of penalty on the respondent under Rule 15 (1) of the Cenvat Credit Rules, 2004 was not called for and the same was correctly set aside by the Commissioner (Appeals). There is, therefore, no infirmity in the impugned order setting aside the penalty. Revenue's appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.