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**(2016) 04 AHC CK 0009**  
**In the Allahabad High Court**

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|----------------------------------------|------------|
| Hindustan Mint & Agro Products P. Ltd. | APPELLANT  |
| Vs                                     |            |
| Union of India                         | RESPONDENT |

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**Date of Decision :** 22-04-2016

**Acts Referred:**

Writ Tax No. 354 of 2016

**Citation :** (2017) 346 ELT 206

**Hon'ble Judges :** Dilip Gupta and Ravindra Nath Kakkar, JJ.

**Bench :** Division Bench

**Advocate :** Shri Nishant Mishra, Counsel, for the Petitioner; Shri Bijendra Kumar Singh, Counsel, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

1. M/s. Hindustan Mint & Agro Products (P) Ltd. is a company engaged in manufacturing of Menthol Crystal, Menthol Powder, De-mentholised Oil (DMO), Peppermint Oil, Spearmint Oil, Terpine Oil, etc. It is registered under the Central Excise Act, 1944. On 21 January, 2006, a team of officers of Central Excise Department (Preventive) searched the registered office and factory premises of the company. According to the petitioners during the search that was carried by the officers, 2 CPU"s containing the business records of the petitioners including the data relating to sale of final products, purchase of inputs, list of purchasers, correspondence were seized and thereafter a show cause notice dated 20/24 March, 2008 was issued to the petitioner-company alleging that it had fraudulently availed the Cenvat credit amounting to Rs. 76,08,939/- without receiving any goods/inputs from the manufacturers at Jammu and had utilised such Cenvat credit for payment of duty on the clearance of goods for export/home clearance claiming rebate. The petitioners submitted an application for being provided either the "CPUs" or the data contained in the CPUs and also demanded cross-examination of certain persons. The grievance of the petitioners basically is that the request made by the petitioners has not been considered and neither the information sought for by the petitioners has been made available nor

the petitioners have been granted permission to cross-examine certain persons.

2. Shri S.D. Singh, learned Senior Counsel appearing for the petitioners has submitted that in order to submit a specific reply to the show cause notice, it was absolutely necessary for the department to supply the information that was sought and the authorities are not justified in refusing the same. The contention further is that though a communication dated 20 January, 2015 was sent by the Assistant Commissioner (Adjudication) at Chandigarh declining to furnish the information sought for by the petitioners relating to cross-examination, but the request of the petitioners for being supplied the information contained in CPUs has not been considered at all. In support of his contention, learned Senior Counsel has placed reliance upon a decision of the Supreme Court in *Andaman Timber Industries v. Commissioner of C. Ex., Kolkata-II*, 2015 (324) E.L.T. 641 (S.C.) and a judgment of Division Bench of this Court in *Novamet Industries v. Union of India*, 2008 (227) E.L.T. 363 (All.) : 2009 (13) S.T.R. 108 (All.).

3. Shri B.K.S. Rabhuvanshi, learned counsel appearing for the respondents has, however, submitted that a reply was sent to the petitioners by the Assistant Commissioner (Adjudication) at Chandigarh and in case the petitioners are aggrieved, they can raise all their pleas in the proceedings that they may take resort to after the adjudicating authority decides the matter. It is also the contention that good reasons have been mentioned in the impugned communication.

4. We have considered the submissions advanced by the learned counsel for the parties. It is not in dispute that two CPUs were seized in the search that was conducted on 21 January, 2006. Though a specific request has been made by the petitioners for providing the CPUs or the data contained in the CPUs, no specific reason has been given in the communication dated 20 January, 2015 for not making available the information to the petitioners.

5. The request for cross-examination has been considered by the adjudicating authority in a cursory manner. The Supreme Court in *Andaman Timber Industries* (supra) in Paragraph 6 dealt with the issue relating to cross-examination of witnesses by the assessee.

6. In the facts and circumstances of the case, it would be appropriate for the adjudicating authority at Chandigarh to examine the issues raised by the petitioners afresh. For this purpose, the petitioners may file an application before the Authority with a copy of the order passed by the Court so that a considered decision can be taken at the earliest.

7. Learned Senior Counsel appearing for the petitioners has pointed out that a notice dated 31 March, 2016 has been issued by the Superintendent (Adjudication) for personal hearing on 25 April, 2016 before the Commissioner, Central Excise Commissionerate, Chandigarh-II. It has also been made clear that in the notice that in case the petitioners do not appear, the case will be taken up for final order on the basis of the material already available on records. It is for

the petitioners to submit an application for postponing the matter in view of the order that has been passed.

8. The writ petition is, accordingly, disposed of with the aforesaid observations.