IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/70259/2017-EX[SM]

(Arising out of Order-in-Original No. 04/Commissioner/Lko/2016 dated 06/01/2017 passed by Commissioner of Customs, Central Excise & Service Tax, Lucknow)

M/s K. M. Sugar Mills Ltd. Appellant
Vs.
Commissioner of Central Excise & Service Tax,
Lucknow Respondent

Appearance:
Shri S. P. Ojha, Consultant,
for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR),
for Respondent

CORAM:
Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision : 20/09/2017

FINAL ORDER NO. 70721/2018

Per: Anil Choudhary

The issue in this appeal is, whether the learned Commissioner have rightly rejected the remission claim of Central Excise duty amounting to Rs.5,19,738/- under Rule 21 of Central Excise Rules, 2002.

2. The brief facts are that for the sugar season 2011-12, the appellant filed a remission claim on 01/03/2013 stating therein that they are submitting the requisite information in Form 335-CU1 for condonation of loss of molasses in storage for the sugar season 2011-12 i.e. from 30/11/2011 to 27/07/2012. It is further stated that the loss is a normal loss due to storage loss, which is beyond the control of the appellant. Further stated that the losses is about 1.98% of the quantity manufactured and cleared which is below 2% accepted as normal loss by CBEC vide circular number 261/15/82-CX-02 dated 18/07/1983. They further stated that the storage loss is verified in MF-5 Part I & Part II register, duly certified by the State Excise Inspector who is in the physical control of molasses under the State Excise Laws. The copies of the relevant pages of the MF-5 register were also annexed to the application. Further, the loss was also disclosed in the ER-1 Return filed for July, 2012 & August, 2012.

3. The learned Commissioner vide the impugned Order-in-Original dated 06/01/2017, was pleased to reject the claim, observing that the appellant failed to intimate the Department within 24 hours of loss and further the identification of storage tank was not made individually. Hence, actual loss of molasses cannot be verified at this stage. Further, observed that the appellant have not submitted evidence that the losses is on account of evaporation and chemical reaction or due to natural cause.

4. Being aggrieved the appellant is before this Tribunal. The learned Counsel for the appellant contended that the learned Commissioner have rejected the claim in a mechanical way, which shows total non-application of mind. He further urges that molasses is in the physical control of the State Excise Authorities. The State Excise Authorities have certified and

accepted the storage loss of molasses. In this view of the matter, without there being any contrary finding and/or adverse material on record, the learned Commissioner have erred in rejecting the claim on flimsy and nonest grounds. Accordingly, prays for allowing the appeal with consequential benefits.

5. Heard the learned A. R. for Revenue who have relied on the impugned order.

6. Having considered the rival contentions and on perusal of the facts on record, I hold that the grounds given by the learned Commissioner, in the impugned order, for rejection of the remission claim are flimsy and nonest. The learned Commissioner had been unable to give any reason for rejecting the acceptance of loss by the State Excise Authority, who are in physical control of the molasses, under the relevant State Act and Rules. Accordingly, I hold that the impugned order is nonspeaking, cryptic and not maintainable. Accordingly, this appeal is allowed with consequential benefits to the appellant, and the impugned order is set aside.

(Dictated & Pronounced in Court)

Sd/-

(Anil Choudhary)
Member (Judicial)Ansari
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