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

APPEAL No.E/682/2011-EX[DB]

(Arising out of Order-in-Original No. 11(Remission)/Commr/M-II/2010 dated 28/10/2010 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s DSM Sugar Asmoli, **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/05/2018
Date of Decision : 02/05/2018

FINAL ORDER NO-**70864 / 2018**

Per: Anil Choudhary

The present appeal is arising out of Order-in-Original No. 11(Remission)/Commr/M-II/2010 dated 28/10/2010 passed by Commissioner of Central Excise & Customs, Meerut-II. The issue in this appeal relates to loss of molasses due to Auto Combustion.

2. The brief facts of the case are that the appellant were engaged in manufacture of V.P. Sugar & Molasses under Chapter Sub-heading No.17011190 & 17031000 respectively of

the schedule to Central Excise Tariff Act, 1985. In the manufacture of sugar, molasses is produced as a bye-product. On scrutiny of appellant's ER-1 return for the month of April, 2007, it was noticed that they have cleared a quantity of 9156.600 MT of Molasses without payment of Central Excise duty, claiming the same as destroyed in a fire accident occurred due to auto combustion on 06.04.2007, in RCC Tank No.4. The Central Excise duty involved on the said quantity amounts to Rs.70,73,474/- including Cess. The appellant themselves deducted the said quantity of Molasses evidently from their stock register available on 06.04.2007.

3. Heard the learned Counsel for appellant who submits that the factory of appellant was having 3 steel storage tanks and 1 RCC storage tank. Further, in RCC tank No.4 stored Molasses of 91566.00 qtls were destroyed due to Auto combustion and the appellants took steps to reduce this quantity of 91566 qtls of burnt molasses from their RG-1. The appellant also took steps from time to time to reduce temperature of the tank. It is further submitted that the Fire Brigade Department in their Report dated 18.04.2007, has clearly stated that loss of molasses was due to auto combustion. The factory had kept all the prescribed fire fighting equipments. In the accident, there is no fault on the part of any employee or officer of the factory. The learned Counsel further submits that in the present facts & circumstances of the case he relies on the judgment of this Tribunal in the case of J.K. Sugar Ltd. Vs CCE, Meerut-II

reported at 2016 (344) ELT 604 (Tri.-All.) which has been upheld by the Hon'ble Allahabad High Court reported at 2017 (346) ELT 559 (All.) wherein it was held that the loss of molasses due to unavoidable accident (auto combustion), on account of high ambient temperature- no negligence is there on part of assessee.

4. Heard the learned A.R. for revenue who has supported the impugned order.

5. Having considered the rival contentions, we find that loss have occurred due to unavoidable accident. Further, there is no negligence found on the part of appellant in taking reasonal care. We further find that the judgment of this Tribunal in the case of J.K. Sugar Ltd. (supra) upheld by the Hon'ble High Court is fully applicable in the facts of the present case.

6. Accordingly, in view of the decision of this Tribunal in the case of J.K. Sugar Ltd., appeal filed by the appellant is allowed and the impugned order is set aside. Appellant shall be entitled to consequential relief, as per law.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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