IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/70095/2018-EX[SM]

Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1414-17-18 dated 08.11.2017 passed by Commissioner(Appeals), Central Goods & Service Tax, Noida.

M/s. Triveni Engineering & Industries Ltd.

…APPELLANT(S)

VERSUS

C.E. & S.T.-Noida-ii

RESPONDENT (S)

APPEARANCE

Shri R.Krishnan (Advocate) for the Appellant (s)
Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)

DATE OF HEARING/DATE OF DECISION : 14.05.2018

FINAL ORDER NO.70894/2018

Per Mrs.Archana Wadhwa :

As per facts on record, the appellant is engaged in the manufacture of sugar and molasses falling under chapter 17 of the first schedule to the Central Excise Tariff Act, 1985. The appellants' factory was visited by the officers on 15.10.2015, who conducted various checks and verifications. As per the stock verifications 76 bags of 50 Kg. each totally valued at Rs.1,04,966/- and 1512 quintals of molasses was found in excess as compared to the stock shown in the books of account. The same were seized by the officers and subsequently provisionally released.

2. In the above background proceedings were initiated against the appellant by way of show cause notice dated 08.04.2016 proposing to confiscate the excess found sugar as also to impose penalties upon them. The said proceedings culminated into an order passed by the original adjudicating authority and upheld by Commissioner(Appeals). Hence the present appeal.

3. As regards the excess sugar I find that the appellants have taken a categorical stand that the stock was not measured properly and the number of bags was arrived at by adopting the method of length, breadth and width of the stacks. Otherwise also there is no evidence on record that such excess sugar, if any was meant for clandestine removal so as to justify their confiscation.

As regards molasses, the appellants submit that the dip reading process adopted for stock verification does not reflect the correct method and the quantum is bound to vary on account of volume changes due to changes in temperature and specific gravity. Otherwise also, the ld.Advocate submits that at the end of the year, they have declared the excess quantity of molasses to the Central Excise as also the state excise authorities and have paid duty thereon. Inasmuch as state excise authorities are in physical control of stock of molasses, production, storage and its dispatch stand accepted and recorded in the stock registers, the Revenue's allegations cannot be upheld.

4. After hearing the ld.AR I find favour in the pleas of the ld.Advocate. Apart from the fact that the appellants have challenged the stock-taking of sugar as well as molasses I note that in any case and in any view of the matter, there is not even a iota of evidence to

reflect upon the appellant's *mala fide* that such excess stocks were meant for clandestine removal. As rightly contested by the ld.Advocate, the molasses are under the physical control of the state excise authorities and are required to be cleared under their watchful eyes. The appellants have themselves admitted a particular quantum of molasses to be excess at the end of the season and has paid duty on the same. In such a scenario the charge of intended clandestine removal cannot be sustained. The Tribunal in the case of Kisan Sahakari Chini Mills Ltd. v. C.C.E., Meerut [2017 (347) E.L.T. 509 (Tri.-All.)] has set aside identical allegations and findings of the lower authorities in respect of molasses.

5. In view of the foregoing I find no justifiable reasons to uphold the impugned orders. The same are accordingly set aside and appeal is allowed with consequential relief.

(Operative part of the order was pronounced in the court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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