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

APPEAL No. E/52489/2015-EX[SM]

(Arising out of Order-in-Appeal No. HPU/EXCUS/000/APPEALS-I/205/2014-15 dated 26/03/2015 passed by Commissioner of Central Excise (Appeals-I),Meerut)

M/s Bajaj Hindustan Sugar Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut **Respondent**

Appearance:

Ms. Stuti Saggi, Advocate, for Appellant
Shri Pradeep Kumar Dubey, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 29/01/2018

FINAL ORDER NO. **71025/2018**

Per: Anil Choudhary

The issue in this appeal is, whether the appellant was tallying excess molasses without recording the same in their RG-1 register with intent to remove those clandestinely.

2. The brief facts of the case are that the appellant producer of Sugar & Molasses and stored the molasses in steel tanks. There was an inspection on 18/01/2013 and the total quantity of molasses as per records of the three tanks was 1,06, 845.4 Qtls. and from this the quantity as per inspection report, taken by dip-reading, was found to be 1,44,800 Qtls. (of the three tanks together. Thus, there was

an apparent excess of 37,954.6 Qtls. The Show Cause Notice dated 14th of June, 2013 was issued as it appeared to Revenue that the access quantity of molasses found was in violation of the provisions of the Act and the Rules and on reasonable belief that the same was kept unaccounted with intention to remove clandestinely to evade payment of duty and the same was seized and further the appellant was required to show cause as to why the excess quantity of molasses 37,954.60 valued at Rs.1,32,84,110/- involving duty amounting to Rs.29,31,99,285/- be not confiscated under Rule 25 of Central Excise Rules, 2002 and further penalty was proposed under Rule 25 of Central Excise Rules, 2002. Further penalty was also proposed on Shri Anurag Sharma Assistant Manager (Sales).

3. The appellant appeared and contested the SCN and the same was adjudicated on contest vide OIO dated 28/08/2014 confirming the proposed confiscation of 23,475 Qtls. of molasses after allowing the rebate for normal variation being 10% valued at Rs.82,16,250/- and further redemption fine of Rs.5,00,000/- was imposed in lieu of confiscation. Further penalty of Rs.18,13,444/- was imposed under Rule 25 read with Section 11AC of the Central Excise Act, 1944. Further the redemption fine and penalty were directed to be appropriated from the bank guarantee for Rs.33,21,028/- which was submitted at the time of provisional release of the

seized goods. However no personal penalty was imposed on Shri Anurag Sharma Assistant Manager (Sales).

4. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) who vide the impugned order wherein he pleased to uphold the confiscation of the seized goods and imposition of redemption fine. Further penalty imposed has been reduced to Rs.2 lakhs.

5. Being aggrieved the appellant-assessee is before this Tribunal. The ld. counsel brings to notice that molasses are in the physical custody of the State Excise Department. The State Excise Department takes regular measurements and after taken to the situation allowed adjustment of excess or shortage found. The Resident Officer of the State Excise exercises physical control over production, storage, sale, supply and distribution of molasses and maintain their own sets of records as prescribed under the Act and Rules. Periodic physical verification is also done by the State Excise officials and the same is recorded in the MF-5 (Part-I & II) Register under authentication upon production. The molasses is stored in steel tanks provided with calibration charts for calculation of estimated quantity stored on the basis of volumetric dip reading method. However the dip reading method is not scientific and cannot be always correct because of air bubbles, foaming, impact of pressure, temperature, density, internal reactions of chemicals, solidification influences the volume of the molasses. The calculation of the

molasses done on the basis of estimated the dip reading method however the clearance of the molasses is done on the actual quantity – weighment basis. Due to this, at the time of final clearance of molasses that is likely to be difference of either side. Upon physical verification, after satisfaction, the State Excise officials declare the excess/shortage of molasses, the appellant also makes re-entries in their books of account under the State laws made thereunder. Further, the appellant cannot discharge any quantity of molasses without specific permissions issued by the State Excise Authority, even for own consumption, the appellant is required to obtain requisite permit from the State Excise Authority. Ld. Counsel for the appellant points out that save and except the allegations of excess in quantity of molasses were found on the date of inspection through dip reading method, therefore, there is no allegation in the said Show Cause Notice even the whole allegation of clandestine removal is imaginary and fit to be set aside. The ld. Counsel for the appellant filed reply of Show Cause Notice on 07th August, 2014 before Additional Commissioner wherein detail of molasses excess noted dated 04/02/2013, 28/02/2013, 27/04/2013, 10/07/2013, 27/08/2013 & 03/09/2013, wherein State Excise Authority has certified the detail of shortage/ excess of molasses as follows:-

Date	Tank No. 1	Tank. No. 2	Tank No. 3	Total
04.02.13	2450.00	2360.00	2310.00	7120.00
28.02.13	1230.00	1164.90	758.10	3153.00
27.04.13	607.00	80.68	1519.23	22.7.64
10.07.13	1083.87	1596.42	322.77	3003.06
27.08.13	516.00	2985.80	1528.00	5030.60
03.09.13	0.00	998.40	430.00	1428.40
Total	**5888.40**	**9186.20**	**6868.10**	**21942.70**

Such quantity is certified by Annexure-III or duly in MF-5 Register and also by the State Excise Authority. Such excess quantity 21,942.70 Qtls. of molasses has already been cleared after payment of Central Excise duty. Rest of the quantity (16,011.90 Qtls.) excess observed, which charge is about more than 12% which is accepted normal variation in the dip reading method of stock taking calling for no adverse inference. Accordingly, she prays for allowing the appeal.

6. The ld. A. R. for Revenue have relied upon the impugned Order-in-Appeal of the Tribunal and further emphasis that the courts below have also given relief of 10% normal variation under the dip reading method. Further, the ld. Commissioner (Appeals) have reduced the penalty imposed and as such the impugned order be upheld and the appeal be dismissed.

7. Having considered the rival contentions and on perusal of the facts on record, I find that save and except the excess

quantity of molasses that there is no allegation in the Show Cause Notice. Further, I find that the appellant cannot discharge any quantity of molasses without specific permissions issued by the State Excise Authority, even for own consumption, the appellant is required to obtain requisite permit from the State Excise Authority. Further, no clandestine clearance has been found under the facts and circumstances. In this view of the matter, I hold that the allegation of clandestine removal does not stand and the same is set aside. I find that Show Cause Notice is only presumptive in nature and based on the presumptions and assumption. Accordingly, I set aside the confiscation and the penalty of Rs.2 lakh retained by the ld. Commissioner (Appeals). Thus, the appeal is allowed with consequential relief to the appellant, as per law.

(Dictated in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ansari