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

E/111/2012-EX[DB]

(Arising out of Order-in-Appeal No.275-CE/LKO/2011 dated 30.09.2011 passed by Commr.(Appeals) of Central Excise & Service Tax, Lucknow.)

Bajaj Hindusthan Ltd.

…APPELLANT(S)

VERSUS

Commr. of Central Excise, Lucknow

RESPONDENT (S)

APPEARANCE

Shri S.P.Ojha, Consultant for the Appellant (s)

Shri Gyanendra Kumar Tripathi, AC(A.R.) for the Revenue

CORAM:

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

DATE OF HEARING/DATE OF DECISION :10.07.2018

FINAL ORDER NO.71386/2018

Per Mrs.Archana Wadhwa :

The appellants are engaged in the manufacture of sugar and molasses and other allied products. Their factory was visited by the Central Excise officers on 18.08.2009, who verified the stock of molasses available with the appellant by adopting volumetric method and an excess quantity was arrived at to the extent of around 20.78

percentage. The same was put under seizure and on subsequent adjudication was confiscated with an option to the appellant to redeem the same on payment of redemption fine of Rs.17,21,010/- and penalty of Rs.2.00 Lakhs was imposed in terms of Rule 25(b) of Central Excise Rules.

2. The orders passed by Commissioner(Appeals) are also to the same extent.

3. The appellants have first of all contested the method of stock taking of the molasses and have submitted that on account of various reasons the method cannot be held to be accurate. They also contended that the molasses are under physical control of state excise authorities and as such the allegations made by Revenue are based upon assumptions and presumptions.

4. The seizure and the subsequent confiscation of the molasses by the Revenue is based upon the fact that the said molasses were meant for clandestine removal and were not entered in records with a *mala fide*. Apart from the fact that the volumetric method adopted by the Revenue for stock-taking has not been held to be a correct method by various decisions of the Tribunal, I note that the molasses being under the state excise control authorities, are required to be cleared under the sanction and approval of the said state authorities, in which case reflection of any *mala fide* on the assessee cannot be upheld. I also note that in an identical circumstances Tribunal has set aside the identical confiscation of molasses in the case of M/s.Saraya Sugar Mills, vide FO No.71197/2017 dated 06.10.2017.

5. In view of the above, I find no justifiable reasons to uphold the impugned orders. Accordingly the same are set aside and appeal is allowed with consequential relief to the appellants.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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