CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70666 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1835-17-18 dated 15/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

M/s L H Sugar Factories Ltd. **.....Appellant**

(Civil Lines, Pilibhit)

VERSUS

Commissioner, Central Tax (Appeals), Noida

.....Respondent

3rd Floor (Begmans Business Park),

KP-III, Greater Noida

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for Appellant
Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71955 / 2019

DATE OF HEARING: 25 November, 2019
DATE OF DECISION: 25 November, 2019

ARCHANA WADHWA

After hearing both the sides duly represented by learned Chartered Accountant, Shri Kapil Vaish appearing on behalf of the appellants and learned A.R. Shri Anupam Kumar Tiwari appearing on behalf of the Revnue, we find that the appellant who is engaged in the manufacture of sugar was also storing the molasses emerging during the course of manufacture of sugar. On a visit by the officers, the same were found to be in excess than the recorded balance. The same was seized by the officers and proceedings were initiated for confiscation of the same as also for imposition of penalty on the allegations that the same were meant for clandestine removal. The proceedings initiated by show cause notice culminated into an order passed by the Authorities below confiscating molasses with an option to redeem the same on payment of redemption fine of Rs.5.50 lakhs and imposing penalty of Rs.21.87 lakhs. The order passed by the Original Adjudicating Authority was upheld by the Commissioner (Appeals) and hence the present appeal.

2. We find that apart from the excess availability of molasses in the assessee's factory, there is otherwise neither any allegation nor any evidence to the effect that the said molasses were either in the process of being removed or were meant for clandestine removal. Otherwise also molasses are under the State Excise control and cannot be removed without their proper permission. Molasses excess found were only to the tune of 10.5% of the total quantum available and as per the various decisions of the Tribunal, such percentage can be on account of number of factors like foaming of molasses on account of weather condition etc. Reference can be made to the following decisions:-

(i) Bajaj Hindustan Ltd. V/s Collector of Central Excise, Kanpur reported as 1994 (72) E.L.T. 710 (Tribunal).

(ii) Ghatampur Sugar Co. Ltd. V/s Collector of Central Excise, Kanpur reported at 1996 (85) E.L.T. 69 (Tribunal).

(iii) Kisan Sahkari Chini Mills Ltd. V/s Commissioner of C.Ex., Ghaziabad reported at 2001 (129) E.L.T. 364 (Tri.-Del.)

3. In the absence of any evidences to establish the assessee's intention to remove the goods clandestinely, we find no reasons to confiscate the goods or to impose penalty upon them. Accordingly, impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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