REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70072-70073/2015- dated 23/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

OPS 22/11

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/55865& 55965/2014SM	WAVE INDUSTRIES PVT TD UNIT- BIJNOR(UP) BIJNOR(UP)
		MOHD YUNUS WAVE INDUSTRIES PVT TD UNIT- BIJNOR(UP) BIJNOR(UP)

Name and Address of Respondent: CCE MEERUT I
MAGAL PANDEY NAGAR
OPP CCS UNIVERISTY,MEERUT I

Other Appellants and Respondents as per Annexure

Copy To

4Advocate(s) / Consultant(s): SH AALOK ARORA,ADV
82- MISSION COMPOUND
SAHARANPUR, UP

5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Veithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

Ex. Appeal Nos.55865 & 55965/14

Arising out of OIA Nos.34-CE/APPL/MRT-1/2014 & 55-CE/APPL/MRT-I/2014 both dated 25.06.2014 passed by Commissioner of Central Excise (Appeals), Meerut I

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

---

M/s Wave Industries Pvt. Ltd.
Md.Yunus

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut I

RESPONDENT (S)

APPEARANCE

Shri Aalok Arora, Adv. for the Appellant (s)
Shri Ashok B. Kulgod, A.C. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 23. 10. 2015

FO ORDER NO. 70072-70073/2015

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The Appellants are in Appeal against Order-in-Appeal Nos. 34-CE/APPL/MRT-I/2014 & 55-CE/APPL/MRT-I/2014 both dated 25.06.2014 passed by Commissioner of Central Excise (Appeals), Meerut I, whereby in respect of discrepancy found on physical verification of stock, the appeal is partly allowed by deleting the addition of duty levied on molasses along with penalty but in respect of sugar it was confirmed.

2. The brief facts are that the inspection was carried out on 24/1/2012 in the factory premises of the appellant situated at Bijnor. On verification of the stock of sugar and molasses, it was found that there is an excess quantity of 600 quintal of sugar. At the same time molasses was found in excess being 877.080 quintal. A show cause notice dated 4.7.2012 was issued upon the appellant industry as well as it's Authorised Signatory, Manager, Md. Yunus. It appeared to revenue that the appellant have not properly accounted for the excess quantity of sugar and molasses found with intent to remove the same clandestinely. Further the explanation given at the time of inspection was not found satisfactory and accordingly it was proposed to confiscate 600 quintal of sugar valued at Rs. 17,40,000/ involving Excise duty of Rs. 58,710/- and also 877.08 quintals of the molasses valued at Rs. 2,71,895/- involving Excise duty of Rs. 6 67,755 should not be confiscated under rule 25 of Central Excise rules read with section 110 (1) of Customs act 1962 as applicable to the

provisions of Central Excise At. Further, penalty was proposed on the company under rule 25 and under rule 26 on the Authorized Signatory, Md.Yunus.

3. The appellant contested the show cause notice and the same was adjudicated vide order your dated 31/10/13 wherein the sugar and molasses were confiscated under rule 25 of Central Excise rules with an option to redeem by paying fine of Rs. 2 lakhs. Further penalty of Rs. 1,20,465/- was imposed on the appellant company and equal amount of penalty was imposed on Md.Yunus under rule 26 of the Central Excise Rules. Being aggrieved the appellant preferred an appeal before the ld. Commissioner (Appeal) vide the impugned order was pleased to allow the appeal in part in respect of molasses. Being aggrieved the appellant is before this Tribunal.

4. The ld. Counsel for the appellant urges that although the ld. Commissioner appreciated the shortcomings in the stock taking of both sugar and molasses but have been pleased to allow the appeal only in respect of molasses, and have erred in confirming the duty with penalty on sugar. The appellant vehemently urges that the variation in the stock of sugar on the date of inspection is less than half percent. He further draws my attention to the statement of the various persons recorded on the date of inspection wherein they have explained that the variation is due to - firstly, the stacks of sugar are broken, secondly, as the production is in process and fresh quantity of sugar is coming to the Godown every hour and accordingly there is bound to be variation in the opening stock of sugar and the sugar found at the time of inspection which was conducted at 18:30 hours and the same was

influenced by the day's production as the industry runs round the clock and hourly stock is never taken. Those ~~that~~ Here is bound to be fluctuation in the physical stock taken under the facts and circumstances. The ld. Commissioner has erred in confirming the demand on sugar observing that the employees of the appellant had participated in the stock taking which is totally erroneous. Accordingly he prays for setting aside the demand sustained vide the impugned order in respect of sugar with penalty.

5. The learnedly D.R. relies on the impugned order.

6. Having considered the rival submissions I find that under the facts and circumstances there, ~~it~~ is bound to be variation in the physical stock taken and the book records as the production was in process and stock was coming in the godown every hour and it is not possible to update the book records hourly. The appellant has a practice of updating the production records on daily basis. In this view of the matter the variation found being less than half percent, the same is accepted as normal variation in the process of stock taking calling for no adverse inference. Thus the appeals are allowed and the impugned order, so far as it concerns the confirmation of demand with the penalty on sugar is set aside along with the redemption fine. Penalty on the employee, Md.Yunus, is also set aside.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
7/12/15
Registrar
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001