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

Dated: 22/04/2016

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **A/ 70134-70135/2016 SM** dated 8/4/2016</u>

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.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/82&1637/2010	J.K.SUGAR LTD SINDHAULI ROAD MEERGANJ, DISTT-BAREILLY UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, MEERUT II OPP SAHEED PARK(NEAR ASHOK KI LAT)DELHI ROAD, MEERUT

Other Appellants and Respondents as per Annexure

Copy To

3<u>Advocate(s) / Consultant(s</u> SH RAJESH CHIBER, ADV
FA-9, KAVI NAGAR
GHAZIABAD

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONEL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/82 & 1637/2010(SM)

(Arising out of Order-in-Original No. 09/COMMR./M-II/2008 dated 25-03-2009 & Order-in-Appeal No. 117-CE/MRT-II/2010 dated 31/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes.

J.K.Sugar Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut II **Respondent**

Appearance:

Shri Anagh Mishra (Jr. of P. Bisht) Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 08/04/2016
Date of Decision : 08/04/2016

Final ORDER NO. 70134-70135/2016

Per: Anil Choudhary

In these appeals filed by assessee, the issue is- whether they are entitled remission of duties on molasses lost (in store) due to auto combustion, or accident.

2. The brief facts not in dispute are that Appellant is manufacturer of sugar & molasses since 1995-96. Molasses are under physical control of the state Excise dept. of U.P. and the state Excise Inspector is posted at the factory. The daily stock record of molasses is maintained in form MF-5 register, as prescribed under the state rules. As molasses are volatile in nature subject to spontaneous decomposition of non-complex non-sugars under formation of CO_2, which is an exothermic reaction (a chemical reaction that releases energy by light or heat). On 05-06-07, the appellants at about 5.00 AM noticed foam and molasses coming out of tank No. I. On the same day they informed Range Supd., By fax and Revenue officials visited the factory. Appellant also took all plausible steps to mitigate the loss by sprinkling water, etc. Assistance of fire-brigade was also taken. The over flow stopped only at about 4.00PM on 06-06-07. The oozed out molasses where collected in 2 pits. Round the clock dispatches were made from the other tank (no-2) to minimize loss. Proper intimation was also given to the various state Excise authorities, of the incident. The Revenue was kept

informed regularly vide letters dated 07/06/07, 11/06/07, 11/07/07. The appellant filed claim for remission before the commissioner for duty of Rs. 48,41,683/-, for 62,675.50 quintals of molasses lost during the accident (auto combustion) from 05-06-07 to 07-06-07. It was explained that the immediate cause of accident appeared to be delayed cane-crushing season, attributable to crop and deteriorated quality of cane. The entire stock of molasses, 62,675.50/- qtls (in Tank No.1) had burnt and destroyed. The molasses were no longer fit for consumption or industrial use, as certified by reputed test labs.

3. That the claim was adjudicated vide Order-in-Original dated 26.03.2009 and rejected on the ground-accident could have been avoided had the appellant made proper arrangements to cool down the temperature of molasses tank. It was further observed that the appellant sold 31,713.20 Qtls of burnt molasses (cinder), but did not pay any duty. Thus, as burnt molasses were marketable, they were consumable and not unfit for consumption, as reqd under Rule 21 of CER. Reliance was also placed on CBEC Circular No. 9/1990 dated 19-03-90, wherein it is provided.-

"3. *The matter has been further examined in the Board and it is felt that the classification of charred molasses appears to be under heading 17.03 as molasses or 23.01 as other waste of sugar manufacture or 38.23 as residual product of chemical and other industries, depending on the extent of damage or burning during auto-combustion, as opined by the Deputy Chief Chemist. The exact classification can be ascertained by drawing samples and from* *chemical analysis. If charred molasses is not marketable, it can further be destroyed and duty remitted under rule 49."*

4. It was further observed that the test reports certify that left molasses were not of desired standard, however the properties retained in such burnt molasses were enough to classify it under chapter heading no. 1703 of schedule to CET Act, due to residual properties being similar to good molasses. Accordingly, duty was held payable on burnt molasses removed. Further observed that reemission was available only in case of goods not being marketable and hence destroyed only 31713.20 Qtls was shown as removal of cinder (burnt molasses) and balance (62,675.50-31,713.20) or 30,962.30 which was claimed as loss in burning and evaporation was also held not allowable, alleging negligence on the part of appellant.

5. That being aggrieved with the Order-in-Original, rejecting claim, the learned Counsel urges that there is no finding of negligence save and except a bald allegation in the impugned order. No case is made out that the appellant did not take reasonable steps to avoid the accidental loss or mitigate the same. Further the molasses pursuant to production are under the physical control of state Excise dept. All dispatches/sales are made on release order or permits granted by the controller of molasses under the state Rules. It is further evident from Register of molasses in form MF-5, that the state Excise authorities have admitted the

loss, as per endorsement made on the register. It is further urged that burnt molasses/cinder, even if held classifiable under heading 23.01 as waste from food industry, was chargeable to nil rate of duty, during the relevant period. Further reliance is placed on Circular No. 822/19/2005-CX whereby it is clarified that cinder (coal ash) is non-taxable item. Further burnt molasses, no longer remained molasses, and had been removed as cinder, which is not disputed. Further loss of volume and weight on burning is natural, and the learned Commissioner have erred in disbelieving the burning loss. The learned Counsel relies on the following rulings:-

i) Shanker Suger Mills V/s CCE 1994 (71) ELT 753 (Tri.Del).

ii) RBNS Sugar Mills Ltd. V/s CCE 1996 (87) ELT 687 (Tri-Del)

iii) Hindustan Insecticides Ltd. V/s CCE, Cochin reported in 1988 (33) E.L.T. (Tribunal)

6. The ld. D.R. relies on the impugned order. He further relies on the following rulings:-

i) Mewar Sugar Mills Ltd. V/s Union of India reported in 1993 (63) E.L.T. 612 (Raj.)

ii) Kesar Enterprises Ltd. (Sugar Div.) V/s CC&CE, Meerut-II reported in 2007-TIOL-728-HC-MAD-CX Allahabad.

Having considered the rival contentions, I find that loss have occurred due to unavoidable accident. Similar question was earlier considered by this Tribunal in RBNS Sugar Mills Ltd. (supra), wherein this Tribunal took notice that - Auto Construction of molasses stored in tanks is a recurrent natural phenomenon. National Sugar Institute, Kanpur, have also accepted this, stating that these accidents usually take place at high temperature during summer months, when the ambient temperature is high. Further, there is no negligence found on the part of the appellant in taking reasonal care. It is also an admitted fact, that post accident the appellant have removed cinder (burnt molasses). As per the un-controverted test reports, burnt molasses were no longer fit for consumption. Accordingly I hold that the appellant is entitled to remission of duty under Rule 21 of CER. The ruling relied upon by the revenue are distinguishable and not applicable. In the case of Hindustan Insecticides, good dispatched by wagon, did not reach destination, nor its whereabouts could be known, to conclude event of loss. In Mewar Sugar, the issue before the Rajasthan High Court was- whether molasses, made taxable under CET w.e.f. 1.3.1975, where still excisable, even if a waste; which is not the issue herein.

7. In the other appeal No. E/1637/2010, demand, of duty etc. have been confirmed, in view of rejection of remission by the commissioner.

8. Thus, both the appeals are allowed in the following terms-

i) The impugned orders and demands are set aside.

ii) The appellant is entitled to remission under rule 21 of CER.

iii) The appellant is entitled to consequential benefits, in accordance with law.

(Dictated in Court)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

Akp//

प्रमाणित प्रति / Certified True Copy
4.5.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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