REGISTERED / AD

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

Dated: 07/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70036 /2015- dated 18/09/2015

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.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/1751/2007	C.C.E.LUCKNOW, 7-A ASHOK MARG, LUCKNOW.
	E/CO/221/2007	

Name and Address of Respondent	D.S.M SUGAR RAUZAGAON, DISTT- BARABANKI.(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH RAHUL AGARWAL, ADV
74/62, LAL BAHADUR SHSTRI
MARG, NEAR HOTEL AJAY
INTERNATIONAL, ALLAHABAD.

4 Bar Association, CESTAT, Delhi
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 AND SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

APPEAL NO: E/1751/2007
CROSS-OBJECTION NO: E/CO-221/2007

[Arising out of Order-in-Original No: 03/Commr./LKO/2006 dated 16/06/2006 passed by the Commissioner of Central Excise, Lucknow.]

For approval and signature:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Commissioner of Central Excise
Lucknow ...*Appellant*

versus

D.S.M Sugar ...*Respondent*

Appearance:

Shri Bharat B Sharma, Asstt. Commissioner (AR) for the appellant

Shri Rahul Agarwal, Advocate for the respondent

CORAM:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

Date of hearing: **18/09/2015**
Date of decision: **18/09/2015**

Final **ORDER NO:** 70036 | 2015

Per: P. S. Pruthi:

Revenue has filed this appeal against Order-in-Original No: 03/Commr./LKO/2006 dated 16/06/2006 passed by the Commissioner of Central Excise, Lucknow.

2. The respondent who are engaged in the manufacture of sugar informed the department that a quantity of 1,31,472.30 quintals of molasses stored in tank No. 3 was rising due to sudden rise of temperature of the said tank. Although they took action to check the rise of the temperature, the same could not be controlled and resulted in auto combustion of the molasses involving Central Excise duty of ₹

that all the necessary precautionary devices in the concerned tank were there and there was no proof of negligence or mischief. The fire brigade and survey report of Oriental Insurance Company also confirmed the loss due to spontaneous combustion.

6.1. The remission has to be examined in terms of Rule 21 of the Central Excise Rules, 2002. The Rules states that :

> "***Rule 21. Remission of duty.*** *- Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:*"

6.2. The question to be considered is whether the loss of molasses due to oozing out before the auto combustion can be considered for the purpose of remission of duty. We find that the oozing out is a natural phenomenon and, therefore, the case is well covered under Rule 21. The learned AR's contention that the respondent did not take sufficient precaution is not acceptable in the light of reports of Sector Officer and Range Officer as discussed above. The learned AR has not been able to show from any technical document that the respondent should have stored 10% less of the total capacity of the tank. Even assuming that this was a technical necessity, it cannot be denied that the oozing out was caused due to natural phenomena of excessive heating in the summer months. It is not the case of the Revenue that the quantity which oozed out, was used later. Neither is the case of the Revenue that the quantity in the tank which was 131472.30 quintals as verified by UP Excise authorities, did not reflect the correct quantity stored in tank No. 3. Revenue has not even verified either the quantity stored in the tank or the quantity oozed out. Revenue's appeal is simply based on the survey report of the insurance company which excluded 10% of the quantity stored while sanctioning the insured value. Even if the insurance company did not consider the quantity which had oozed out, there is no denying the fact that the same had occurred due to a natural phenomena. Therefore, no case is made out for denial of remission.

6.3. Appeal dismissed. The Cross Objection filed by the respondent is also disposed of.

(Pronounced in Court)

Sd/-
(S.S. Garg)
Member (Judicial)

Sd/-
(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy
5.10.15
सहायक पंजीकार / Asstt. Registrar
38, M. G. MARG, ALLAHABAD 211001