FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 09/08/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70754/2017-SM[BR] dated 28/07/2017

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
1	E/1169/2011	UTTAM SUGAR MILLS LTD., BARKATPUR, TEHSIL-NAJIBABAD, DISTT. BIJNOR.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s):

KAPIL VAISH
2nd Floor, Part-a Krishna Janki Palace, 35-c, Rampur Garden, Civil Lines, Bareilly, Up

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/1169/2011-EX[SM]

(Arising out of Order-in-Original No. 16(Rem)/Comm/M-II/2011 dated 25/01/2011 passed by Commissioner of Central Excise, Meerut-II)

M/s Uttam Sugar Mills Ltd. **Appellant**

Vs.

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

Appearance:

Shri Kapil Vaish, Chartered Accountant, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 28/07/2017

FINAL ORDER NO. 70754/2017........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. 16(Rem)/Comm/M-II/2011 dated 25/01/2011 passed by Commissioner of Central Excise, Meerut-II.

2. The brief facts of the case are that the appellants were engaged in manufacture of Sugar & Molasses. The appellants informed the Superintendent, Central Excise Range – Dhampur through letter dated 08/04/2008 that on 08/04/2008 at 12.30 p.m., all of a sudden Molasses stored in their Molasses Tank No. 2 flew from the Tank, due to an outlet valve body damage and in spite of their best efforts, a huge quantity of Molasses got damaged. The appellant

admitted that due to the said incident of damage to be outlet valve body of Tank No. 2 58365.56 Qtls of Molasses were lying in the open surface on sandy soil. The said quantity of Molasses involved Central Excise duty of Rs.45,08,739.51/-. Therefore, through an application dated 15/06/2008 made under Rule 21 of the Central Excise Rules, 2002 address to Commissioner Central Excise, Meerut-II appellant sought remission of duty of Rs.45,08,739.51/-. While the application for remission was pending before the Commissioner, Revenue issue Show Cause Notice to the appellant on 18/03/2009, wherein it was alleged that it appeared to Revenue that incidence took place due to negligence that the assessee failed to get pressure of the tank checked properly and therefore, appellants were called upon to show cause as to why Central Excise duty amounting to Rs.45,08,739/- should not be recovered from them under Section 11A of Central Excise Act, 1944. The said Show Cause Notice was adjudicated through impugned Order-in-Original No. 16(Rem)/Comm/M-II/2011 dated 25/01/2011. The Original Authority has held that if the regular examination was being done, the localized rupturing would have been noticed and safety measures such as empting the tank could have been taken by way of transferring the same to Tank No. 1 where the molasses stored were less than its total capacity and that the appellant has never established that the impugned goods were not fit for human consumption or marketable and, therefore, Original Authority has held that the appellant's case was not covered by the provisions of Rule 21 of Central Excise Rules, 2002. Through the said Order-in-Original No. 16(Rem)/Comm/M-II/2011 dated 25/01/2011 appellants application for remission dated 15/06/2008 was rejected and demand of Central Excise duty amounting to Rs.45,08,739/- was confirmed. Being aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant who has submitted a paper book containing application for remission of duty and the report issued by National Sugar Institute, Kanpur. He has submitted that the report regarding bursting of the said valve dated 14/08/2008 given by National Sugar Institute, Kanpur pointed out the probable reasons for failure of outlet discharge valve was that the Molasses tank was filled upto the height of 9.37 meter and therefore, hydrostatic pressure was created on the inner side of the said valve and that the thickness of valve body varied from 8.4 MM to 12.2 MM and therefore, the valve body was subjected to differential pressure which resulted in rupture of valve body initially at least thickness area which ultimately resulted in complete breaking from the root of said valve body since valve was of cast iron and further stated that the cumulative effect of the said two conditions might have resulted in bursting of the said valve. He has further relied on observations of Hon'ble President of this Tribunal in the case of U. P. State Sugar

Corporation Ltd. *Versus* Commissioner of Central Excise, Meerut-I reported at 2014 (302) E.L.T. 249 (Tri. – Delhi) and submitted following observations of President of Tribunal "As regards the plea that the accident was avoidable it is suffice to say that every accident is on account of lack of precaution on the part of the personnel responsible for avoiding such incident. Nobody deliberately would indulge in an exercise which may result in huge loss. Therefore, we are of the view that interpreting Rule 21 of the Central Excise Rules, 2002 the authorities are required to be liberal otherwise restrictive construction to Rule 21 would make it inoperable and redundant. In our aforesaid view, we are supported by the judgment of Hon'ble Rajasthan High Court in the matter of Union of India *Versus* Hindustan Zinc Ltd." [reported at 2009 (233) E.L.T. 61 (Rajashtan)]. He has further argued that the observation of ld. Commissioner that it is not established that the impugned goods were not fit for human consumption or marketable are unreasonable and stated that the said observation of Commissioner that the appellant could not establish that goods on which remission were sought were not marketable is contradictory to the facts stated in Para 4 of the said Show Cause Notice dated 18/03/2009.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Original No. 16(Rem)/Comm/M-II/2011 dated 25/01/2011.

5. Having considered the rival contentions and on perusal of the facts on record, the issue to be decided by me is, whether the said remission application dated 15/06/2008 merits consideration under provision of Rule 21 of the Central Excise Rules, 2002. The admitted facts are that due to the bursting of outlet valve of Tank No. 2 on 08/04/2008 58365.56 Qtls of Molasses was lying in the open surface on sandy soil around the tank. Said Rule 21 of the Central Excise Rules, 2002 provides for remission of duty where the goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacture as unfit for consumption or for marketing, at any time before removal. I find from Para 4 of the said Show Cause Notice that Revenue has admitted that the said quantity of Molasses have become unmarketable. Now, the only issue is to be decided by me is whether the issue is covered by provisions of said Rule 21. The parameters for such interpretation have been laid down by Hon'ble President of CESTAT in the said case of U. P. State Sugar Corporation Ltd. (supra) wherein he has held that nobody deliberately would indulge in an exercise which may result in huge loss and that the view while interpreting Rule 21 of the Central Excise Rules, 2002 the authorities are required to be liberal and that the restrictive construction to Rule 21 would make it inoperable and redundant. Therefore, I find that the present case is fit for remission of duty under Rule 21 of the Central Excise

Rules, 2002. Therefore, I set aside the impugned Order-in-Original wherein the remission application was rejected and duty demand was confirmed along with interest thereon. I, therefore, hold that the impugned Order-in-Original set aside and appeal is allowed. The appellant shall be entitled for consequential relief, as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy
21/08/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001