FAX : 0532-2400149

REGISTERED / AD

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

Dated: 10/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71197/2017-SM[BR] dated 06/10/2017

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/71012/2016	**Saraya Sugar Mills** Sardarnagar GORAKHPUR UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To

3Advocate(s) / Consultant(s):

S. P. Ojha
299, Baghambari Housing Scheme,
Allahpur,
Allahabad,
Uttar Pradesh

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/71012/2016-EX[SM]

(Arising out of Order-in-Appeal No. 352-CE/APPL-ALLD.LKO/LKO/2016 dated 06/05/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Saraya Sugar Mills **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Shri S. P. Ojha, Consultant, for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 06/10/2017

FINAL ORDER NO. 71137/2017...........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 352-CE/APPL-ALLD.LKO/LKO/2016 dated 06/05/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that appellants were engaged in the manufacture of Sugar & Molasses. The Officers of Central Excise visited the factory premises of the appellants on 06/02/2008 and conducted stock verification of Molasses in respect of Tank Nos. 1 & 2 by dip-reading method and calculated the weight of Molasses available in

both the tanks together and as per their calculation there was unaccounted stock of 4589.98 Qtls. of Molasses. The said stock was seized and a Show Cause Notice was issued on 10/07/2008 calling upon to the appellant to show cause as to why the said quantity of unaccounted stock of Molasses should not be confiscated under Rule 25 of the Central Excise Rules, 2002. On contest the said issued was decided through Order-in-Original No. 06 (MP-D.N.) 2013 dated 04/03/2013. The Original Authority confiscated 3129.48 Qtls. Of Molasses and imposed redemption fine of Rs.1,80,000/- further an amount of Rs.1,00,000/- deposited by the appellant was appropriated. Being aggrieved by the said order appeal was preferred by the appellant before Commissioner (Appeals) which was decided through impugned Order-in-Appeal dated 06/05/2016 wherein the ld. Commissioner (Appeals) upheld the said Order-in-Original dated 04/03/2013.

3. Heard both the parties.

4. Having considered the contentions and on perusal of the facts on record and perusal of the method of quantification of Molasses as reflected in the calculation sheet prepared by Central Excise Officers on 06/02/2008, it was noticed that the volume of Molasses was calculated and it was multiplied by a factor of 1.52535 to convert the volume to weight. Further, the said Show Cause Notice states that the amount of Molasses (at Brix-96) was quantified. On perusal of the calculation sheet and Show Cause Notice, it is evident

that it was presumed by Revenue that the Molasses were having Brix-96. The proceedings do not indicated as to how Brix-96 was calculated and therefore, on perusal of record, it is evident that Brix-96 was presumed and therefore, the calculation arrived in the calculation sheet dated 06/02/2008 are presumptive in nature. Since the said calculations are basis for issue of Show Cause Notice, I hold that Show Cause Notice dated 10/07/2008 is presumptive in nature. I, further, hold that since the said Show Cause Notice is presumptive, it is not sustainable. I, therefore, set aside the impugned Order-in-Appeal dated 06/05/2016. As a consequence, the said Order-in-Original dated 04/03/2013 will not survive in law. In above terms, I allow the appeal. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

Ansari