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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3028/2004

Date 29/01/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
U.P. STATE SUGAR CORPORATION LTD.
U.P. STATE SUGAR STATE CORPORATION LTD.,
PANNI NAGAR, BULANDSHAR
203001

U.P. STATE SUGAR CORPORATION LTD.

C.C.E. NOIDA


Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 32/2008 Excise
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 11-1-08


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. NOIDA

COMMISSIONER OF CENTRAL EXCISE, B-123,
SECTOR-5, NOIDA.

2. Adv. / Consult

MR. BIPIN GARG

B-1/1289, A-VASANT KUNJ, NEW DELHI

3. C.D.R.

~~C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

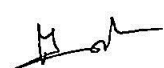
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 3028 of 2004

(Arising out of Order-in-Original No. 09/2004 dated 23.04.2004 passed by the Commissioner of Central Excise, Noida).

DATE OF HEARING : 10/11.01.2008

DATE OF DECISION : 11.01.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT

HON'BLE MR. T.K. JAYARAMAN, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?.	
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	
3.	Whether their Lordships wish to see the fair copy of the Order ?	
4.	Whether Order is to be circulated to the Departmental Authorities?	

U.P. State Sugar Corpn. Ltd.

Appellants

(Rep. by Sh. Bipin Garg, Adv.)

VERSUS

CCE, Noida

....

Respondent

(Rep by Sh. V. Choudhary, Jt. CDR)

**CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. T.K. JAYARAMAN, MEMBER (T)**

Final ORDER NO. 32/2008 EX

PER JUSTICE S.N. JHA :

This appeal by the assessee arises from the order of the Commissioner of Central Excise, Noida, dated 23.04.2004 rejecting the appellant's application for remission under Rule 21 of the Central Excise Rules, 2002.

2. Brief facts of the case are that the appellant is engaged in the manufacturer of sugar and molasses. It has three tanks for storage of molasses having capacity of 40,000 qtls. each. During 2002-03, there was bumper production of molasses and all the three tanks meant for storage of molasses became full a month earlier. In the circumstances, towards the end of April, 2003, additional molasses weighing 28,956.20 qtls. had to be kept in an open tank. Due to summer conditions, temperature rose resulting in material damage to the molasses kept in the open tank. The authorities of the State Excise and the Central Excise Departments were informed about the incident. The case of the appellant is that the rise in temperature leads to increase in the level of foaming and on the particular day, namely, 01.07.2003, the temperature rose to ⁴85C. As a result, the molasses stored in the open tank turned into black carbonized lumps and became waste. According to the applicant, this was a natural phenomenon beyond its control. The loss being by natural causes, it is not liable for excise duty. In these circumstances, application for remission of duty was made in terms of Rule 21 of the Central Excise Rules.

3. Shri Bipin Garg appearing for the appellant submitted that during 2002-03 season, there was bumper crop of sugarcane and production of sugar. Molasses is a by-product of sugar and high production of sugar led to accumulation of molasses. Movement of molasses which ^{is} an input for manufacture of liquor is controlled by the Controller of Molasses under the U.P. Sheera Niyam Adhiniyam, 1964 and the Rules framed thereunder and, therefore, the appellant could not have removed any part of the molasses. Molasses were allotted to different distilleries but only two of them, namely, Rampur Distillery and Frost Falcon Distillery, Sonapat, took delivery, but only parts of the quantity ~~is~~ allotted to them. In these circumstances all that the appellant could do was to prevent the level of foaming. When the temperature started rising day-by-day, the appellant used additional pump to re-circulate the molasses admixing anti-foaming chemicals to control extra foam formation. But on account of heavy increase in temperature, the measures taken by the appellant proved insufficient and the molasses suffered loss. The damage being on account of natural cause and beyond the control of the appellant, the appellant having taken all possible steps in the matter, the remission application should have been allowed.

4. On behalf of the Department it was stated that the claim of the appellant is not supported by the records. The claim is founded on supposition that all three tanks wherein molasses were kept, had been fully utilized and additional quantity of molasses only was kept in the open tank. From the records, however, it is manifest that in the three tanks in question, taken together, 107.828 qtls. of molasses

only had been kept. The tanks having a combined storage capacity of 120,000 qtls. it will follow that 12,172 molasses more could be stored. The appellant having not utilized the tanks to ^{their} ~~its~~ full capacity, the justification put forward for keeping the molasses in the open tank, cannot be accepted. Learned DR submitted that the storage of molasses in the open tank was unauthorized and the appellant cannot claim any remission for any damage, caused to the same.

5. Having given our anxious consideration to the submissions advanced by learned counsel for the appellant and the learned DR, we find that the case of the appellant regarding the molasses suffering material damage on account of spurt in temperature is not in dispute. The rise in temperature results in foaming of molasses and when the rise is more than normal, the level of foaming would become abnormally high. This is a natural phenomenon called auto-combustion which cannot be prevented. We are, therefore, inclined to accept the case of the appellant that on account of high production of sugarcane and corresponding rise in the sock of molasses, it had no option but to keep the molasses in the open pit. However, we are unable to accept the case of the appellant as a whole. As indicated above, the three tanks in question had a combined storage capacity of 120,000 qtls., but only 107,828 qtls. were kept therein which means that additional 12,172 qtls. could be kept in them. The act of the appellant in not fully utilizing the tanks and storing 28,956.20 qtls. in the open pit, therefore, cannot be said to be a bonafide act. We are, therefore, of the view that the appellant was entitled to remission of duty on the quantity of molasses which

could not have been kept in those tanks. It is relevant to mention that the molasses stored in the steel tank did not suffer any material damage on account of the rise in temperature, that is the same weather condition. Needless to say that the temperature level in the steel tanks, which were covered, was different from the temperature level in the open pit, which was more exposed to seen and vagaries of nature. In view of the above discussion, we hold that the appellant was entitled to remission of excise duty on 15,651 qtls. of molasses but not entitled to remission on the balance quantity, which could be kept in the steel tank. The liability of the appellant may be reassessed in the light of these findings and fresh demand be issued to the appellant.

6. In the result, the appeal is allowed in part to the extent mentioned above.

(Dictated and pronounced in the open Court on the 11TH day of January, 2008)

(JUSTICE S.N. JHA)
(PRESIDENT)

(T.K. JAYARAMAN)
MEMBER (TECHNICAL)