TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/1943/2006-1944/2006 Date 12/05/2008

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011
C.C.E BHOPAL Appellant
Vs
SOM DISTILLERIES LTD SEHATGAJ (M.P.) Respondent

I am directed to transmit herewith a certified copy of **Final order** No.245-246/2008-EX Excise dated 6-5-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
SOM DISTILLERIES LTD SEHATGAJ (M.P.)
SOM DISTILLERIES LTD SEHATGAJ (M.P.)
2. Adv. / Consult
MR.RAVI RAGHWAN
B-6/10 SAFDARJUNG ENCLAVE, NEW DELHI 110029
3. C.D.R.
~~4. I.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

1 M/S SHRI RAVI DANG
E-1/152 CHINAR COMPLEX BHOPAL M.P.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 1943-1944 OF 2006

[Arising out of Order-in-appeals No. 11-12-CE/BPL/2006 dated 12.1.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. M. Veeraiyan, 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?	[illegible]
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	[illegible]
3.	Whether their Lordships wish to see the fair copy of the order?	[illegible]
4.	Whether order is to be circulated to the Departmental authorities?	[illegible]

CCE, Bhopal — Appellant

Vs.

M/s. Som Distilleries Ltd.,
Shri Ravi Dang — Respondents

Appearance:

Shri Shri V.K. Chaudhar, SDR for the appellants,
Shri A.R.M. Rao & Shri R.K. Hasija, Advocates for the respondents

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing: 29th February, 2008

FINAL ORDER NO. 245-46 / 08-Ex **dated** ________

Per S.S. Kang:

Revenue filed these appeals against common impugned whereby demand and penalties are set aside.

2. Brief facts of the case are that the respondents are engaged in the manufacture of Indian made foreign liquor for which respondents are procuring molasses. Income-tax department searched office, residential and factory premises of the respondents and certain documents were recovered showing procurement of molasses by the respondents which are not reflected in the statutory records. Relevant documents were handed over to the Central Excise department and investigation was conducted. During investigation it was found that the respondents obtained molasses from various khandsari units which is not reflected in the statutory record. Show cause notice was issued for demand of duty on the quantity of molasses which were procured by the respondents but not reflected in the statutory record as the buyer of molasses from khandsari units are liable to pay duty.

3. The adjudicating authority confirmed the duty and imposed penalties. Commissioner (Appeals) in the impugned order accepted the plea of the respondents that molasses was received in the factory, however, as the same was not found of requisite quality thus not accepted by the respondent and set aside the demand.

4. The contention of the revenue is that as the respondents has accepted the receipt of molasses in their factory, therefore, onus is on the respondents to show use of the same. Plea of the respondents that the same was received in the factory but as the same was not of the

requisite quality thus not accepted by the respondents is without any evidence on record. There is no evidence by way of statement nor documentary evidence that the factory of the respondents is having facility to test molasses. There is also no evidence regarding return of molasses from the factory. In these circumstances impugned order is not sustainable.

5. The respondents supported the order passed by the Commissioner (Appeals).

6. We find that in the present case demand is in respect of molasses received in the factory which was not reflected in the statutory record. The respondents admitted the receipt of molasses in the factory but failed to show its utilization of the same and there is no evidence on record to show return of the same from the factory as the same was not of requisite quality. In these circumstances the matter requires re-consideration. The impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide afresh after affording reasonable opportunity of hearing to the respondents.

(Pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDNET

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Dated 6th May, 2008-05-06
RK