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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 4629/2004 Date 18/07/2008

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

To :
U.P. STATE SUGAR & CANE DEVELOPMENT CO. LTD.
BHATNI, DISTT. DEORLA
274701

U.P. STATE SUGAR & CANE DEVELOPMENT CO. LTD. Appellant
Vs
C.C.E. ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No** 482/2008- **Excise** dated 13-6-08

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1 Respondent
C.C.E. ALLAHABAD
38, M.G. MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
3. C.D.R.
4. ~~J.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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 4629 of 2004

[Arising out of Order-in-Appeal No. 232/CE/APPL/KNP/2004 dated 22.5.2004 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

M Veeraiyan

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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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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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UP State Sugar & Cane Development Corporation Ltd. — Appellant

Vs.

Commissioner of Central Excise Allahabad — Respondent

Appearance:

Mr. Bipin Garg, Advocate for the Appellant
Mr. H.K. Thakur, Jt. CDR for the Respondent

M Veeraiyan

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of decision : 13.6.2008

Final **ORDER NO. 482 / 08-EX**

Per M.Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. 232/CE/APPL/KNP/2004 dated 22.5.04.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:-

a) The appellant is engaged in the manufacture of VP sugar and molasses. The appellant claimed certain storage and reprocessing losses.

b) The original authority held that the losses reported were on the higher side and therefore, demanded duty amounting to Rs.1,26,380/- along with interest and imposed penalty of Rs.1,26,380/- under section 11 AC. Commissioner (Appeals) had upheld the order of the original authority.

4.1. Learned advocate submits that during the course of manufacturing certain quantity of brown sugar/ rori sugar/scrapping was left in the machinery at the end of each crushing season. The brown sugar so left at the end of crushing season in the machinery is not a marketable product. The content of molasses in the left over brown sugar is high. The left over brown sugar requires to be further processed during the subsequent season to obtain the end-product which is marketable namely, VP sugar. The tolerance limit of 0.5 % fixed by the Board for storage / re-processing loss shall apply to the final products and not at the intermediated stage. He also submitted that

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the sugar is hydroscopic substance, hence the weight loss is on the higher side.

4.2. Learned advocate relied on the decision of Hon'ble High Court of Delhi in their own case reported in 1999 (107) ELT 23, where it has been held that such brown sugar which is in semi-finished form containing 90% of the sucrose could not be treated as sugar. He also relied upon the decision in the case of Collector of Central Excise, Patna vs. SKG Sugar Mills Ltd. [1995 (78) ELT 368(Tri)] and in the case of Kisan Sahkari Chinni Mills vs. CCE, Lucknow [2006 (206) ELT 671(Tri-Del)] wherein it has been held that the re-processed sugar should be treated as production of the year in which re-processing was completed as only after being re-processed the sugar became marketable.

5. Learned DR reiterates the finding of the Commissioner (Appeals).

6. We have carefully considered the submissions from both the sides. It is not disputed that the sugar which was left over at the end of the crushing season was being subjected to further processing at the beginning of the next season before they are marketed. It is also not in dispute that the left over brown sugar requires substantial processing before they can be marketed . If it was in marketable condition, it would not have been left in the machinery weighting for commencement of the next season. It has also been submitted that the contents of molasses in the left over brown sugar is very high. In our opinion, the tolerance limit prescribed for storage losses by the Board applies only to standard sugar and the same cannot be adopted in this case. Further, no evidence of any malpractice has been relied upon. Regarding the submissions of the Department that sugar includes any form of sugar and therefore, the brown sugar should be held to be excisable, may not be applicable to the present facts of the when the product has not reached the marketable stage. In the appellant's own case Hon'ble Delhi High Court

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has held that brown sugar obtained in such circumstances cannot be considered as sugar.

7. Appeal is allowed with consequential relief.

(Operative part of the order pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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