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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/5048/2004 Date 16/07/2008

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

To :
C.C.E. MEERUT-II

SAHEED PARK, NEAR ASHOK KI LAT, DELHI ROAD,
MEERUT(UP)
C.C.E. MEERUT-II Appellant

Vs

M/S KESAR ENTEPRISES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 465/2008 **Excise** dated 14-7-08

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1 Respondent

M/S KESAR ENTEPRISES LTD.

BAHERI, DISTT. BAREILY(U.P)
2 Adv. / Consult SH. KAPIL VAISH, CA
B-51, BUTLER PLAZA,
CIVIL LINES, BAREILLY

3 S.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)

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

EXCISE APPEAL NOS. 5048 OF 2004-B

Date of Hearing: 11.7.2008
Date of Decision: 11.7.2008

[Arising out of Order-in-Appeal No.142-CE/MRT-II/2004 dated 12.7.2004 passed by the Commissioner of Central Excise (Appeals), Meerut-II]

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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? : No
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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CCE, Meerut — Appellant
[Rep. by: Shri V.K. Agrawal, DR]

Versus

M/s.Kesar Enterprises — Respondent
[Rep.by: Shri Kapil Vaish, C.A]

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL **ORDER** 465/08-CB

Per Archana Wadhwa:

A short issue is involved in the present appeal of the Revenue that is sugar which was originally cleared as levy sugar but subsequently converted into free sale sugar, is required to pay duty at the higher rate or not. The lower authorities by relying upon the earlier decision of the Tribunal in the case of **Shri Bhagwati SSK Ltd. &Anr.** has allowed the appeal. We find that an identical dispute was also considered by the Tribunal in the case of **Shravasti Kisan Sahkari Chiini Mills Ltd.** vide Final Order No. 543/06-NB-A dated 7.5.2004 wherein in para 5 of their judgment it was observed as under :-

> "It is clear from the statutory scheme indicated above that any sugar cleared as levy sugar has to be assessed at the rate as applicable under sub-heading 1701. The assessment in the present case is in conformity with this. That subsequent price revision etc. makes no difference remains settled by the decision of this Tribunal in the case of **Shri Bhagwati SSK Ltd. & Anr.** Moreover, in the present case, no reimbursement of duty at a higher rate has taken place."

2. We do not find any reason to take a different view. Accordingly, the appeal filed by the Revenue is rejected

[Operative part of the order already pronounced in the open Court on 11.7.2008]

14/7/08

[Archana Wadhwa]
Member (Judicial)

14/7/08

[M. Veeraiyan]
Member (Technical)

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