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

Appeal No. ST/132 /2006-136 /2006, & ST/407. 512/07 Date 08/07/2008

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

To :
M/S NAWANSHAHR CO-OPERATIVE SUGAR MILLS LTD
NAWANSHAHR, PUNJAB

M/S NAWANSHAHR CO-OPERATIVE SUGAR MILLS LTD — Appellant

Vs

COMMISSIONER OF CENTRAL EXCISE, JALLANDHAR — Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/113-119/08 Customs dated 20.06.08 passed by the Tribunal under Section 129. (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   COMMISSIONER OF CENTRAL EXCISE. JALLANDHAR
   CENTRAL REVENUE BUILDING. PLOT NO 19. SECTOR-17. CHANDIGARH
2. Adv. / Consult
   MR.VIKRANT KACKRIA
   509, SEC-7,PANCHKULA, HARYANA
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
(Customs Appeal Branch)

P.T.O.

17 M/S RANA SUGARS LTD, AMRITSAR
BUTTAR SEVIAN, AMRITSAR (PUNJAB)

18 M/S GURDASPUR CO OPERATIVE SUGAR MILLS LTD
GURDASPUR, PUNJAB

19 M/S AJNALA CO OPERATIVE SUGAR MILLS LTD
AJNALA

20 M/S TARN TARAN CO OPERATIVE SUGAR MILLS LTD
TARN TARAN, PUNJAB

21 M/S NAHAR INDL. ENTERPRISES
AMLOH ROAD, MANDI GOBINDGARH

22 M/S NAHAR INDUSTRIAL ENTERPRISES LTD.
VILL. SALANA JEON SINGHWALA, AMLOH, DISTT. FATEHGARH SAHIB (PUNJAB)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. II
Service Tax Appeal No. 132-136 of 2006 and 407-512 of 2007

[Arising out of the Order-in-Appeal No. 144/CE/CHD/2007 dated 07/05/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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?	:	No
2.	Whether it would 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?	:	Yes
4.	Whether order is to be circulated to the Department Authorities?	:	No

M/s Nawanshahr Co-operative Sugar Mills & Ors.] Appellant

Versus

CCE, Jallandhar/ Chandigarh & vise versa — Respondent

Appearance

S/Shri Vikrant Kachria and Rupinder Singh, Advocates – for the appellant.

Shri Amit Jain, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 20/06/2008.

Final Order No. ST/113--119/08 Dated : 20/6/08

Per. Rakesh Kumar :-

The appellants in appeal No. ST/132,133,134,135 and 136/06 and No. ST/512/07 and the respondents in the Revenue's appeal No. ST/407/07 are Sugar Mills. The appeal No. ST/512/07 and the Revenue's appeal No. ST/407/07 are against the same order-in-appeal passed by CCE (Appeals), Chandigarh.

1.1 The appellants in the appeal No. 132-136/06 and 512/07 are required to maintain, as per the orders of the Ministry of Consumer Affairs, Government of India, certain stock of free sale sugar for a specified period and the Appellant's cost of storage, insurance and interest on the stock is reimbursed by the Government in form of subsidy. On expiry of the specified storage period, the appellant sugar mills are free to sell the sugar to whomsoever ~~whosoever~~ they want. The Revenue is of the view that manufacturing the stock of a specified quantity of free sale sugar by the appellant sugar mills for a specified period as per the orders of the Ministry of Consumer Affairs, Government of India, the expenses for which are reimbursed by the Government, amounts to providing to the Government "Storage and Warehousing Service" which is taxable under Section 65 (105) (zza) read with Section 65 (102) of the Finance Act, 1994. Accordingly, the demands of service tax on the subsidy amount received by the appellant sugar mills, which consists of three components – interest on stock, insurance and storage charges, were made and confirmed by the Joint Commissioner, Central Excise, Chandigarh. In the appeals No. ST/132-136/06, the CCE (Appeals), upheld the Joint Commissioner's order in toto. However, in appeal No. ST/512/07, the CCE (Appeals) ~~has~~ upheld the demand of service tax only on the storage and insurance charges and ~~has~~ set aside the demand of service tax on ~~as~~ the reimbursement for interest on stock and against the portion of order dropping the demand of service tax on the interest charges, the Revenue has filed appeal No. ST/407/07 before this Tribunal.

1.2 Thus the common point of dispute in these appeals is whether maintaining stock of a specified quantity of free sale sugar for a specified period by the appellant sugar mills, as per the orders of the Ministry of Consumer Affairs, Government of India, and for which the appellant mills are reimbursed by the Government in form of a subsidy, amounts to providing "storage & warehousing service" as defined under Section 65 (105) (zza) read with Section 65 (102) of the Finance Act, 1994 and whether the entire subsidy amount received by the appellant sugar mills would attract service tax under Section 66 of the Act.

2. Heard both the sides.

2.1 Shri Vikrant Kachria, Adovcate, the learned counsel on behalf of the appellant sugar mills, made the following submissions :-

(1) The Government of India, in order to maintain a buffer stock of sugar has directed the sugar mills to

maintain stock of a specified quantity of free sale sugar for a specified period for which the sugar mills, are compensated by reimbursement of expenses towards interest, warehousing and insurance. The appellant sugar mills, therefore, have not provided the 'storage and warehouse service' to the Government.

(2) The maintenance of buffer stock of sugar as per the direction of the Government of India is a statutory duty. Payment of certain amounts by the Government to the mills is not a charge for availing of any warehousing service but for compensating the sugar mills for the loss suffered by them for holding up their stock for which provision had been made under Rules 49 (14), 49 (15) and 49 (16) of the Sugar Development Rules.

(3) There are clarifications to the effect that when any activity involves exercise of statutory functions like providing of security by police or para-military organizations, then it is beyond the provisions of service tax. On the same rationale, no service tax would be leviable on subsidy paid by the Government of India to sugar mills for maintenance of buffer stock. This is besides the fact that it is a case of storage of the mills' own goods by them. Hon'ble Tribunal in case of **Karnataka State Beverages Corporation Ltd. vs. Commissioner of Service Tax, Bangalore [2007 (8) STR-481 (Tri. – Bang.)]** held that when, Karnataka

State Beverage Corporation, purchased liquor from the distilleries, stored the same in hired storage godown and thereafter sold the liquor to various ~~wholesales~~ wholesalers holding licenses, the ~~damrage~~ demurrage fee of Rs. 2/- per day charged by the corporation from the distilleries in the case the stock of liquor purchased by them was not lifted within 90 days, would not attract service tax under "storage and warehousing service" as the ownership of the goods during the ~~damrage~~ demurrage period vested in the Karnataka State Beverages Corporation and they can not be said to have provided 'storage and warehousing service'.

(4) These exist no ground to hold that the appellant sugar mills deliberately ~~cancelled a~~ concealed or suppressed material facts from the ~~department~~ Revenue with malafide intention, thereby justifying application of extended period of limitation and liability to penalty and interest.

2.2 Shri Amit Jain, the learned Departmental Representative, emphasized that –

(a) The ~~appellant sugar mills by~~ storing of a specified quantity of free sale sugar for a specified period by the appellant mills, as per the Government of India orders, and for which they have ~~received a~~ passed on compensation in form of subsidy, is covered by the definition of "taxable service" in relation to storage and warehousing of goods, as given in Section 65 (105) (zza) read with Section 65 (102) of the Finance Act, 1994;

(b) The words "to any person" in the definition of taxable service, in relation to storage and warehousing of goods, as given in Section 65 (105) (zza) are very vide and would cover the Government of India and therefore this service would be taxable even if it is provided to Government of India, as per the statutory provisions; and

(c) The fact that during the period of storage the ownership of the good remained with the appellants, is immaterial and what is material for attracting the service tax liability is that the taxable service of storage and warehousing has been provided by the appellant sugar mills to the Government of India, for which they have received payment from the Government in form of subsidy.

3. We have given careful consideration to the submission of both the sides. There is no dispute about the facts that -

(a) The appellant sugar mills are required to maintain stock of specified quantity of free sale sugar for a specified period and for which they receive compensation from the Government of India in form of subsidy, as compliance with the provision of The Sugar Development Fund Rules, 1983 , framed by the Government of India under Section 9 of the Sugar Development Fund Act, 1992 ;

(b) The subsidy received by the appellant sugar mills from the Government is only to cover their expenses towards interest on stock, insurance of stock during the period of storage and storage ; and

(c) The ownership of the goods during the period of storage remains with the appellant sugar mills, and ~~an~~ on issue of release order from the Government, ~~they~~ the Mills are free to sell the sugar to whomsoever they want.

3.1 As per the provision of Section 65 (105) (zza), "taxable service" in relation to storage and warehousing means – "any service provides or to be provided to any person, by a storage or warehouse keeper in relation to storage and warehousing of the goods.

3.1.1. As per Section 65 (102) "Storage and warehousing includes storage and warehousing service ~~for~~ of goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage."

3.1.2. Section 66 is the charging section which provides for levy of service tax at the rate specified ~~it on~~ on all the taxable services" defined in various sub-clauses of clause (105) of Section 65.

3.2 From a combined reading of Section 65 (102), Section 65 (105) (zza), and Section 66, it is clear that in case of storage and warehousing, service tax would be attracted when the service of storage ~~and~~ or warehousing of goods ~~after the~~ other than agricultural produce ~~a~~ or cold storage, is provided by a storage or warehouse keeper to a person. ~~In this case,~~ The Appellant Sugar Mills, in normal course would have stored the free sale sugar in their godown as warehouses till its sale. But because of Government of India's orders, they are required to store a specified quantity of free sale sugar for a period, as specified by the Government, for which they receive a compensation from the Government to cover their expenses towards interest on ~~and~~ stock, insurance and storage. The ownership of the goods remains with the Appellant Sugar Mills and on receipt of the release order from the Government they are free to sell the sugar to any customer. In these circumstances, just because the storage period of free sale sugar had to be extended at the behest of the Government of India, neither the Appellant

Sugar Mills become "storage or warehouse keeper" nor the Government of India become their client in this regard. Storage of a specified quantity of free sale sugar for a specified period to comply with the provisions of the Sugar Development Fund Act, 1982 of the Rules made thereunder can not be treated as, providing "Storage and warehousing service" to the Government of India.

4. In view of the above, the impugned orders in appeal are set aside and while the Appeal No. ST/132 to 136/06 and No. ST/512/07 of the Appellant Sugar Mills are allowed, the Revenue's appeal No. ST/406/07 is rejected.

(Operative part of the order pronounced in the open court.)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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