

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

Date 23/01/2008

Appeal No. E/312 /2006-SM[BR]

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

To :
TITAWI SUGAR COMPLEX
TITAWI, DIST. MUZAFFARNAGAR (UP)

TITAWI SUGAR COMPLEX

CCE, MEERUT-I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 120/2008-SM[BR] dated 18.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE, MEERUT-I
MANGLA PANDEY NAGAR, MEERUT
2. Adv. / Consult
MR. BIPIN GARG
B-1/1289, A-VASANT KUNJ, NEW DELHI
3. S.D.R.
4. ~~J.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
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No.312 of 2006-SM (BR)

[Arising out of order in appeal No.36/Commissioner/M-I/2005 dated 24.10.2005
passed by the Commissioner of Central Excise, Meerut]

Date of Hearing/ Decision:18.12.2007

For approval and signature:

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

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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. | : | |
| 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? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

M/s. Titawi Sugar Complex

...Appellants
[Rep. by Mr. Atul Gupta, Co. Secretary.]

Vs.

CCE, Meerut

Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.....120...../08-SM (BR) Dated: 18.12.2007.

Per P.K. Das:

Heard both sides and perused the records.

2. The appellant filed by this appeal against rejection of remission of duty on 110.75 quintals molasses for the season 2000-01 and 5548.15 quintals of molasses for the season 2001-2002 under Rule 21 of the Central Excise Rules, 2002. The total loss is 0.0289 % and 01.394% respectively of total stored quantity. The appellant claimed that it is a case of storage loss and, therefore, they are unable to give the declaration within 24 hours as required under the Trade Notice. The Commissioner rejected their application as the appellants failed to file the declaration within 24 hours. It is seen that the Tribunal in the case of Shakumbari Sugar & Allied Inds. Ltd. Vs. CCE, Meerut [2004 (171) ELT 286 (Tribunal-Delhi)] held that the loss of 2% is condonable as per Board's Circular, which cannot be denied as the appellants have not informed the department within 24 hours of the loss. In any event, the storage loss cannot be intimated within 24 hours from the loss of the goods, which would be assessed after stock verification. Therefore, the rejection of the claim on these grounds is not sustainable. The Tribunal in the case of Ramala Sahkari Chinni Mills Ltd. Vs. CCE, Meerut-I reported in 2007 (213) ELT 361 (Tribunal-Delhi) held that procedural requirement provided by Trade Notice cannot override or de-limit operation of statutory rules.
3. The Commissioner also observed that the appellant have not taken adequate precaution to safeguard the goods and the loss. It is seen that the percentage of loss is less than 2% and it is storage loss of molasses. The Tribunal in the case of Kesar Enterprises Ltd. Vs. CCE, Lucknow – 2003

(155) ELT 100 (Tribunal-Delhi) held that shortage of molasses below the percentage of 2%, the appellant is entitled to remission of duty in terms of the Board's circular. The same view has been taken by the Tribunal in the case of U.P. Sate Sugar Corpn. Ltd. Vs. CCE, Meerut – 2006 (206) E.L.T. 677 (Tribunal-Delhi). So, the remission of duty on storage loss cannot be denied on the ground that the appellant had not taken adequate precaution to safeguard the goods, which is not contemplated in the Rules. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 18.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.