

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

Appeal No. E/410 /2006
Assistant Registrar
C.E.S.T.A.T, New Delhi

Date 23/01/2008

To :
M/S GANGA KISAN SAHKARI CHINI MILLS
MORNA, MUZAFFARNAGAR.

M/S GANGA KISAN SAHKARI CHINI MILLS
CCE, MEERUT-I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 125/2008-SM[BR] dated 12.12.2007
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
MANGAL 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. 410 of 2006 -SM (BR)

[Arising out of order in appeal No. 122/CE/MRT-I/05 dated 30.06.2005
 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-
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Date of Hearing/ Decision: 12.12.2007

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? :
 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 Ganga Kisan Sahkari Chini Mills Appellant
 [Rep. by Mr. Atul Gupta, Co. Secy. for the Appellant]

Vs.

CCE, Meerut-I Respondent
 [Rep. by Ms. Archana Pandey Tiwari, Joint CDR]

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

Final ORDER No. 125/08-SM(BR)

Per P.K. Das:

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of V.P. Sugar, Molasses classifiable under chapter heading No. 17.01 and 17.03 of the schedule to the Central Excise Tariff Act, 1085. On 12.09.1989, the Central Excise Officers visited the factory and verified the stocks and found shortage of molasses. Show

cause notice dated 25.9.1989 was issued proposing demand of duty of Rs.79,427.88. Further, a corrigendum to show cause notice dated 15.11.89 was issued by the Assistant Commissioner of Central Excise. By adjudication order dated 27.12.2004, the Assistant Commissioner of Central Excise confirmed the demand of duty and imposed penalty of equal amount under Rule 173Q of Central Excise Rules 1944. The Commissioner (Appeals) upheld the adjudication order.

2. The learned Counsel on behalf of the appellant submits that photocopy to show cause notice was served to the appellant on 25.11.2004 and therefore the demand is barred by limitation. He further submits that the shortage is less than 2% which is condonable by Board Circular No.261/15/82-CX-8 dated 18.07.03. He relied upon the decision of the Tribunal in the case of U.P. State Sugar Corpn. Ltd., vs. CCE, Meerut reported in 2006 (206) ELT 677 (Tri.Del.). He also submits that the show cause notice was issued on 25.09.89 and photocopy of this notice was served on 25.11.2004 and there is no allegation of clandestine removal of the goods and therefore imposition of penalty is not justified.

3. Learned Joint CDR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). She submits that there is no dispute that the appellant received corrigendum to show cause notice on 17.11.89 and they did not raise any objection of non-receipt of show cause notice during the passage of time. So, the demand is not barred by limitation. She further submits that the appellant had not applied for remission of duty and the shortage detected during the stock verification by the Central Excise and therefore remission of duty is not applicable.

4. After hearing both the side and on perusal of the records, I agree with the submission of the learned DR that the appellant received the

corrigendum to show cause notice on 17.11.89. This fact is not disputed by the appellant. Therefore, the non receipt of the show cause notice by the appellant is not accepted. Further, the shortage was detected by the Central Excise Officers and no application for remission of duty was filed by the appellant. The contention of the learned Advocate that the case relates to 1989 and the personal hearing was fixed in the year 2004 and due to long delay they failed to produce any evidence in these matters. I find that such submission is not sustainable because the show cause notice was issued in 1989 and therefore they are liable to keep the records properly. Hence, the demand of duty is justified and upheld. So, the case law relied upon by the appellant is not applicable here.

5. However, I find force in the submission of the learned Counsel in respect of imposition of penalty. It is a case of detection of shortage during the stock verification. There is no evidence of clandestine removal of the goods. Further, there is a long delay of the adjudication proceedings and therefore imposition of penalty is not warranted. Accordingly, penalty is set-aside. The impugned order is modified accordingly.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]