

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/521 /2006-SM[BR]

Date 23/01/2008

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

To :
M/S. VENUS SUGAR LTD.
MAZHAWAKI, CHANDAUSI, DISTT. MORADABAD
(U.P)

M/S. VENUS SUGAR LTD.


Appellant

Vs

Respondent

CCE MEERUT-II

I am directed to transmit herewith a certified copy of Final order No.126/2008-SM[BR] dated 3.12.2007 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-II
OPP: SHAHEED PARK, DELHI ROAD, MEERUT(U.P)
2. Adv. / Consult
MR.S.K.GADHOK
133/6,SHASTRI NAGAR,MEERUT
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. 521 of 2006 –SM (BR)

[Arising out of order in Original No. 37/Commr/MRT-II/2005 dated 23.12.2005
passed by the Commissioner, Central Excise, Meerut-II]

Date of Hearing/ Decision: 03.12.2007

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? | : | } <i>yes</i> |
| 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 Venus Sugar Limited

Appellant

[Rep. by Mr. S.K. Gadhok, Advocate for the appellant]

Vs.

CCE, Meerut-II

Respondent

[Rep. by Mr. S. Gautam, Authorised Representative (DR) for the respondent]

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

Final **ORDER** No 126/08-SM(BR)

Per P.K. Das:

The appellant filed this appeal against the rejection of the remission application under Rule 21 of Central Excise Rules, 2002. Learned Counsel on behalf of the appellant submits that the appellant filed the remission application for remission of duty on natural /handling loss. He submits that the Commissioner

observed that handling loss is not either natural or unavoidable. The learned

Advocate relied upon the decisions of the Tribunal as under:-

- i) J.K. Sugar Ltd., vs. CCE, Meerut-II- 2005 (185) ELT 300 (Tri.Del.)
- ii) Ramala Sehkari Chinni Mills Ltd., vs. CCE, Meerut-I (Final order No. 276/07-SM (Br) dated 12.2.2007).

He further submits that the loss is approximately 1.8%. He also submits that the Board clarified to condone losses below 2%.

2. Learned authorized representative (DR) reiterates the finding of the Commissioner. He submits that the appellant have not specified as to how the loss was 'natural'.

3. After hearing both sides and on perusal of the records, I find that the Commissioner rejected the remission application on the ground that handling loss manmade and cannot be stated to be either natural or unavoidable. She observed that handling loss is not come within the ambit of Rule 21 of Central Excise Rules, 2002. The Tribunal in the case of J.K. Sugar Ltd., (supra) held that handling loss is covered under Rule 21 of the Rules. The relevant portion of the said decision is reproduced below:-

“5. It is to be noted that proviso to Rule 49 specifically covered both storage and handling losses. Though the subsequent Rule 21 does not specifically mention 'handling' the reference in the Rule to “unavoidable accident at any time before removal” would cover handling losses also. In the present case the losses are extremely insignificant and can only be attributed to unavoidable losses during handling as well as storage. The denial of remissions had not been correctly done. The impugned orders are set aside and the appeals are allowed with consequential relief, if any, to the appellants”.

4. In view of the above, I find that the order of the Commissioner is not sustainable and accordingly the same is set-aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]