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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/1074/2006

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

To :
M/S MODI SUGAR MILLS
MODI NAGAR,GHAZIABAD

M/S MODI SUGAR MILLS — Appellant
Vs
CCE, GHAZIABAD — Respondent

I am directed to transmit herewith a certified copy of Final order No. 127/2008-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, GHAZIABAD
   CGO COMPLEX GHAZIABAD
2. Adv. / Consult SHRI, ATUL GUPTA CO. SECY.
   B-1/1289-A, VASANT KUNJ NEW DELHI-70

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 Publictions (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,
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 1074 of 2006-SM

[Arising out of Order-in-Appeal No. 130/CE/GZB/2005 dated 21.11.2005 passed by Commissioner of Central Excise (Appeals), Ghaziabad]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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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? :

Modi Sugar Mills — Appellant

Vs.

Commissioner of Central Excise. Ghaziabad — Respondent

Appearance: Shri Atul Gupta, Company Secretary for the Appellant
Shri B.S. Suhag, JDR for the Respondent

Date of decision : 12.12.2007

Final ORDER NO. 127/08-SM(BR)

Per S.S. Kang:

Heard both the sides. Appellant filed this appeal against the impugned order whereby the excess stock of molasses was confiscated and allowed to be redeemed on payment of redemption fine. The case of the Revenue is that the stock of molasses was verified on 26.7.2004 by dip reading method and quantity of 2002.80 quintals was found in excess. The contention of appellant is that the appellants are engaged in the manufacture of sugar and during the period in dispute, as it was the crushing season and the molasses was continuously coming to the tank through pipes. Therefore, due to foaming it was found that there was excess stock. The contention is that only variation was only 5.59% of the total stock. The appellant relied upon ISI specification to submit that as per the ISI specification 10% variation is always provided for working out the quantity in tanks for storage of molasses. The appellant relied upon the judgment of the Tribunal in Bajaj Hindustan Ltd. vs. CCE, reported in 1994 (72) ELT 710 (Tri), and in case of Kisan Sahkari Chini Mills Ltd. vs. CCE, Ghaziabad reported in 2001 (129) ELT 364 (Tri-Del) where the demand in respect of excess stock found which is less than 10% was set aside.

2. The contention of the Revenue is that as excess stock was found in the factory it was liable for confiscation.

3. In this case, the stock of molasses was measured by dip reading method and when the stock was verified crushing of sugar was on and molasses were continuously coming to the tank through pipes and in this situation, the appellant pleaded before the lower authorities that this variation is due to foaming of the molasses. I find that in the present case variation is 5.59 % of the total stock as recorded in the RG I register. In the case of Bajaj Hindustan Ltd. (supra) and in the case of Kisan Sahkari Chini Mills Ltd. (supra) relied upon by the appellant, the allowance of 10% as per

the ISI specification were given due to foaming during the storage of molasses. In the present case, as variation is less than 10% therefore, confiscation of excess molasses is not sustainable hence set aside The appeal is allowed.

(Dictated in the open Court)

(S.S. Kang)
Vice President

Dt:12.12.07
ss