

**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/1214/2006-SM[BR]

Date 24/01/2008

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

To :  
M/S TEJ ENTERPRISES  
JOHN MILLS COMPOUND NO-4, JEONI MANDI AGRA

M/S TEJ ENTERPRISES

Appellant

CCE, KANPUR

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 133/2008-SM[BR] dated 17.12.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
CCE, KANPUR  
CCE, 117/7 SARVODAYA NAGAR KANPUR
2. Adv. / Consult SHRI. ATUL GUPTA CO. SECTY.  
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 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
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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.1214 of 2006-SM (BR)**

[Arising out of order in original no.4/Commr./Tech/Rem/2005 dated 23.12.2005  
passed by the Commissioner, Central Excise, Kanpur]

**Date of Hearing/ Decision:17.12.2007**

**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>Tej</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. Tej Enterprises

...Appellants  
[Rep. by Shri Atul Gupta, Co.-Secretary]

Vs.

CCE, Kanpur

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

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

*Final* Order No. 133/08-SM (BR) /Dated: 17.12.2007.

**Per P.K. Das:**

The appellant filed this appeal against rejection of remission application filed under Rule 49 of the erstwhile Central Excise Rules, 1944.

2. Heard both sides and perused the records.

3. The findings of the Commissioner of Central Excise are reproduced below:-

“ From the above, it is established beyond doubt that “Had the party taken all the safeguards & proper infrastructural management in the factory to prevent the fire, there would had not been such a major fire accident.” Thus, it can be safely concluded that the fire accident that occurred in party’s factory on 28.4.1995 cannot be said to have occurred due to natural causes, beyond the control of the party.”

4. I find that the Tribunal in its series of decisions held that remission of duty cannot be denied on the ground that the assessee has not taken sufficient safeguards. Some of the decisions are given below:-

- (1) New Phaltan Sugar Works Ltd. Vs. CCE, Pune-II  
2002 (141) ELT 720 ( Tribunal-Mumbai).
- (2) CCE, Surat-II Vs. Welspun Terri Towels  
2002 (149) ELT 593 (Tribunal-Mumbai).
- (3) Onida Savak Limited Vs. CCE, Noida  
2004 (176) ELT 143 (Tribunal-Delhi).
- (4) Shiva Essentials Oils & Chemicals Vs. CCE,Noida  
2004 (168) ELT 121 (Tribunal-Delhi).

5. In the case of New Phaltan Sugar Works Ltd. (supra), the Tribunal observed that It does not give any benefit or pleasure to the manufacturer to see his products destroyed. Combustion in molasses is a very serious affair

controlling which is almost impossible. The rules do not prescribe any procedure for the assesseees to follow to ensure that their goods are not destroyed. Further, in the case of Onida Savak Limited (supra), it has been held that Rule 49 of erstwhile Central Excise Rules, 1944 does not contemplate an investigation and determination regarding preventability of natural cause or accident.

6. In the present case, there is no dispute that fire accident was occurred. The Commissioner disallowed the remission claim on the ground that the appellant had not taken all safeguards and proper infrastructural management in the factory, which is beyond the scope of the Rules. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 17.12.2007.

( P.K. Das )  
Member (Judicial)

Ckp.