

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/2265/2006-SM[BR]

Date 28/01/2008

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


To :
M/S DEWAN SUGAR LTD
AGHWANPUR, MORADABAD

M/S DEWAN SUGAR LTD

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-II

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 189/2008-SM[BR] dated 24.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-II
BHAISALI GROUND, MEERUT-II
2. Adv. / Consult
MR. KAMALJEET SINGH
J-144, PATEL NAGAR -I, GHAZIABAD.
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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 2265 of 2006-SM(BR)

(Arising out of Order-in-Original No. 41/Commr./MRT-II/2005 dated 30.12.2005 passed by the Commissioner of Central Excise, Meerut-II)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 would 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 Dewan Sugar Ltd.

Appellant

Vs.

CCE, Meerut-II

Respondent

Appearance:

Shri Kamaljeet Singh, Advocate

- For appellant

Shri B.S. Suhag, DR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 24.1.2008

Final Order No. 189 / 08-SM(BR) dated 24.1.08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby the remission of duty in respect of molasses was denied on the ground that the appellant had not

followed the procedure as laid down under the circular and the information regarding the loss was not sent to the Revenue within 24 hrs. from the occurrence.

3. The contention of the appellant is that there is no loss due to unavoidable accident, it is a loss during storage which is less than 2% of the total molasses stored by them. It is also submitted that this storage losses were also certified by State Excise Department.

4. The appellant relied upon the decision of the Tribunal in the case of **Ramala Sehkari Chinni Mills Ltd. Vs. CCE** reported in 2007 (80) RLT 261. The Tribunal in this case held as under :-

“In the present case, when the storage loss of 52.160 MT of molasses, which undisputedly was only 0.20% of the total quantity and was within the permissible limit of condonable 2%, had occurred, there was no reason for the Commissioner for not giving the benefit of the circular letter dated 18th July 1983 issued by the Board which specifically applied to storage of molasses in steel tanks.

The circular letter F.No. 261/15/82/CX.8 dated 18th July 1983 issued by the Board on condonable losses of molasses, in terms, provided that the instructions permitting condonable loss up to 2% was confined to storage losses observed in steel tanks/pakka pits. An identical issue that

arose before the Tribunal in **J.K. Sugar Limited Vs. CCE, Meerut-II**, reported in 2005 (70) RLT 147 (CESTAT-Del.)= 2005 (185) ELT 300 (Tri.-Del.) was decided in favour of the applicant by holding in the context of Rule 21 that, though Rule 21 did not specifically mention 'handling' the reference in the rule to 'unavoidable accident at any time before removal' would cover handling losses also. Therefore, the losses that had occurred due to storage as well as due to leakage while transferring the molasses to the tankers for transport within the premises which would be 'handling' losses, were both covered for the purpose of deciding the remission of duty up to the condonable limit of 2% as envisaged in the Circular letter of the Board.

For the foregoing reasons, the impugned order of the Commissioner cannot be sustained and is hereby set aside, and the remission claim of the appellant under Rule 21 of the Central Excise Rules, 2002 is allowed. The appeal is, accordingly, disposed of."

5. The ratio of the above decision is applicable on the facts of the present case. Therefore, the impugned order is set aside and appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM