

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/2973/2005-SM[BR]

Date 07/02/2008

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

To :
THE KENORIA SUGAR & GRNL.&GENL. MFG.CO.LTD.
CAPTAINGANJ-274301. DISTT. KUSHINAGAR[U.P.]

THE KENORIA SUGAR & GRNL.

Appellant

C.C.E ALLAHABAD

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 284/2008-SM[BR] dated 4.2.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult SHRI. S.D. GAUR
SB-108, SHASTRI NAGAR GHAZIABAD[U.P.]
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
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.2973 of 2005(SM)

[Arising out of Order-in-Appeal No.128-CE/APPL/Kanpur/05
dt.28.2.05 passed by the Commissioner(Appeals), Kanpur)

For approval and signature:

Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

-
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 :
Department Authorities:

M/s. Kanoria Sugar & Genl.Mfg.Co. Ltd. Appellant

Versus

CCE, Allahabad

Respondent

Appearance

Sh. S.D.Gaur, Consultant For Appellant

Ms. Archana Pandey Authorised Representative(JCDR)For Respondent

Coram: Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

Date of decision: 4.2.08
Final Order No. 284/08-SM(BR)

Per A.K.Srivastava:

Heard both the sides and perused the records.

2. Brief facts of the case are that the appellants are engaged in the
manufacture of V.P.Sugar and clearing free sale sugar as well as Levy Sugar

on payment of duty. The Directorate of Sugar, New Delhi vide its Order No.1-5/97/SC dt.29.9.07 addressed to National Federation of Co-operative Sugar Factories Ltd., New Delhi and Indian Sugar Mills Association, New Delhi directed certain sugar mills to sell specified quantity as levy sugar out of stock of free sale sugar of the sugar season 96-97 during the month of Jan'98. As per the said order, the difference in the Central Excise duty between free sale sugar and levy sugar (out of the free sale sugar) were to be reimbursed by the Govt. Even though the sale will be as levy sugar out of free sale sugar, the factories will be paid the differential duty of Rs.33./- per qtls. by the Govt. as per the Directorate of Sugar's another letter No.1-2-/97-SP4(D-11) dt.13.10.98. Accordingly, 14656 Qtls. of free sale sugar was converted into levy sugar vide release order dt.16.12.97. In compliance of the aforesaid order, the Appellants cleared 14656 Qtls. of free sale sugar as 'levy sugar' during the period Jan'98 on payment of duty of Rs.7,62,112/- thereby short paying duty to the tune of Rs.4,83,648/-, which was recoverable from them. Accordingly, a show cause notice dt.4.10.99 was issued to the appellants proposing demand of differential duty of Rs.4,83,648/- with interest and penal action.

3. On adjudication, the Addl. Commissioner, vide Order-in-Original dt.29.9.2000 confirmed the demand of differential duty of Rs.4,83,648/-, which was already paid by them on 7.1.2000. The Addl. Commissioner also ordered recovery of interest under Section 11AB of the Central Excise Act,1944 and imposed penalty of Rs.4,83,648/- on the appellants under Rule 173Q read with Section 11AC *ibid*. On appeal, the Commissioner(Appeals) has upheld the order-in-original passed by the Addl. Commissioner.

4. The appellants are in appeal only against the imposition of penalty and the demand interest.

5. From the sequence of events as narrated above, it is clear that there was no suppression of facts or mis-statement etc. with intention to evade payment of duty on the part of the appellants. They acted as per the instructions of the Govt. Hence the imposition of penalty of Rs.4,83,648/- is not justified in the facts and circumstances of the same. The same is set aside.

6. However, the appellants are liable to pay interest at the applicable rate under Section 11AB *ibid* on the duty demanded and confirmed from the date they received the differential price (i.e. difference in prices of freesale sugar and levy sugar) to the date of payment of differential duty i.e. 7.1.2000, following the ratio of the Tribunal's decision in the case of CCE, Allahabad vs Tulsipur Sugar Co. Ltd. reported in 2008(84)RLT.274(CESTAT-Delhi). I order accordingly.

7. The appeal filed by the appellant is disposed of in the above terms.

(Operative part of the order pronounced in the open Court).

(A.K.Srivastava)
Member Technical

km