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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 19/03/2008

Appeal No. E/1785/2005-SM[BR]

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

To :
M/S THE KISAN SAHAKARI CHINI MILLS LTD
MAHMUDABAD, SITAPUR

M/S THE KISAN SAHAKARI CHINI MILLS LTD — Appellant

Vs

C.C.E LUCKNOW — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 426 /2008 -SM[BR]** dated **7.1.2008**

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E LUCKNOW
   7-A, ASHOK MARG, LUCKNOW
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No.1785 of 2005-SM (BR)

[Arising out of order in appeal No.107-CE/2005 dated 28.2.2005 passed by the Commissioner (Appeals) Central Excise, Lucknow]

Date of Hearing/ Decision: 7.1.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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?	:	NO
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. The Kisan Sahkari Chini Mills Ltd.. Appellants
[Rep. by Mr. Bipin Garg, Advocate]

Vs.

CCE, Lucknow Respondent
[Rep. by Mr. S. Gautam, Authorized Representative (DR)]

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

Final **ORDER NO. 426/2008-SM /Dated:7.1.2008**

Per P.K. Das:

The appellant filed this appeal against rejection of refund claim of Rs.1,08,900/-. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of sugar of two grades viz. M-30 and S-30 for free sale and levy sale respectively. The rate of duty on free sale is higher than levy sale. The appellants cleared the sugar of both the grades from their factory on payment of duty to their rented godown. They filed refund claim for Rs.1,08,900.00 as they had cleared 3,325 Quintals M-30 grade sugar during the period 16.3.97 to 20.3.97 to their godown on payment of duty at free sale price and they cleared the said goods at levy rate (i.e. lower rate of duty). The adjudicating authority rejected the refund claim on the ground that the refund claims submitted by the appellants accompanied invoices of sugar of M-30 Grade whereas the invoices showing the removal of the clearances was of S-30 Grade and there was no correlation, which was upheld by the Commissioner (Appeals).

2. Ld. Advocate on behalf of the appellants submits that in the month of March, 1997, the appellants stored both types of sugar in their duty paid godowns. Subsequently, in accordance with Release Order of the Sugar

Directorate they sold 3,300 bags of S-30 Grade as levy sugar. He submits that the rate of duty of sugar is specific and, therefore, the clearance of different rate has no relevancy. He further submits that taking into account of the total receipt of both grades of sugar at duty paid godown, it will be clearly established that the appellants cleared S-30 Grade levy sugar from stock. He further submits that there is no dispute that the appellants cleared S-30 Grade of levy sugar and there is no scope for rejecting the refund claim.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellants failed to correlate the clearance of the goods from their factory to godown and onwards. He further submits that the Commissioner (Appeals) categorically examined the refund claims, and allowed another refund claim of Rs.9,900/-. He submits that in the present case, the appellants have not produced any evidence in support of the refund claim and, therefore, it was rightly rejected by the lower authorities.

4. After hearing both the sides and on perusal of the records, I find that the invoices submitted by the appellants were for clearance of the M-30 Grade sugar from duty paid godown. But the invoices accompanied the refund claims were showing the removal of clearance under levy sale of S-

30 Grade. It is seen that the appellants in their reply to show cause notice stated that in the godown, both S-30 and M-30 Grade sugar were stored and accordingly, the clearances were effected of the same grade, which are shown in the invoices. No attempt was made by the appellants before the authorities below to reconcile the clearances of both the grades from their duty paid godown. In this context, the ld. DR drew the attention of the Bench to the paragraph-8 of the impugned order, wherein the appellants reconciled the clearances of the different grades in respect of another refund of Rs.9,900/-. The relevant portion of the impugned order is reproduced below:-

> "8. I observe that in the impugned order, the Asstt. Commissioner has also dealt with another refund of Rs.9,900/- claimed by the appellant wherein 340 bags of M-30 grade sugar was removed to the duty paid godown on payment of duty at free sale rate, and in the claim, the documents submitted showed only 200 bags of M-30 grade and 100 bags of S-30 grade removed under levy. The Asstt. Commissioner allowed the refund only for the 200 bags of M-30 grade. The appellant have themselves agreed not to claim the refund in respect of the 100 bags of S-30 grade as the duty paid documents for the levy clearances did not tally with the original invoices."

5. In view of the above, I find that the lower authorities rightly observed that storing of S-30 Grade in the duty paid godown was not substantiated by evidence and the refund claim was rejected. So, there is no reason to

interfere the order of the Commissioner (Appeals). Accordingly, the appeal is rejected.

Order dictated & pronounced in open court on 7.1.2008.

(P. K. Das)
Member (Judicial)

Ckp.