

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/1346 /2006 &3439 /2006-SM[BR]

Date 19/03/2008

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

To :
(1-2) M.S MAWANA SUGAR WORKS
MAWANA, DISTT MEERUT-I

M.S MAWANA SUGAR WORKS

Appellant

C.C.E. MEERUT I

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 440-441 /2008 -SM[BR] dated 3.3.2008
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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.
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 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)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI, COURT NO.1
EXCISE APPEAL NOS.1346 & 3439 OF 2006

[Arising out of order-in-original No.66/COMMR/2005 dated 30.12.2005/31.1.2006 and order-in-appeal No. 121-122-CE/MRT-1/2006 dated 31.7.2006 passed by the Commissioner of Customs and Central Excise (Appeals), Meerut-I]

Date of Hearing/Decision: 3.3.2008

Hon'ble Mr. Justice S.N. Jha, 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. | : | no |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | yes |
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M/s. Mawana Sugar Works	Applicant
[Rep. by: Mr. Bipin Garg & Mr. Atul Gupta, Advocates]	
Versus	

CCE, Meerut-I	Respondent
[Rep. Mr. Sumit Kumar, Authorized Representative(DR)]	

Coram: Hon'ble Mr. Justice S.N. Jha, President

FINAL ORDER 440-441/2008 SM/BR

Per Justice S.N.Jha:

Excise Appeal No. 1346 of 2006 is directed against the order-in-original of the Commissioner of Central Excise dated 30.12.2005 rejecting the appellant's claim for remission of central excise duty due on 1929.55 Qtls. of molasses under rule 21 of the Central Excise Rules, 2002. Excise Appeal No.3439 of 2006 is directed against the order-in-appeal of the Commissioner (Appeals) 31.7.2006 upholding the order-in-original of the Assistant Commissioner dated 28.4.2005 while reducing the penalty to

Rs.20,000/-. By the said order dated 28.4.2005, the Assistant Commissioner had confirmed demand of Rs.96478/- under Section 11A of the Central Excise Act read with rules 4 and 8 of the Central Excise Rules, 2002, imposed penalty of equal amount under rule 25 of the Central Excise Rules read with Section 11 AC of the Act, and also awarded interest on the amount in terms of Section 11 AB of the Act. It may be mentioned at this stage itself that the demand of duty was confirmed by the said order as sequel to the rejection of claim for remission which is the subject matter of Excise Appeal No.1346 of 2006(supra). The appeals being thus interconnected, they were taken up together and are being disposed of by this common order.

2. The appellant is a manufacturer of sugar. Molasses is a by-product of sugar and is an excisable goods. Besides being a by-product of sugar, it is also an input for manufacture of spirit. The case of the appellant is that the molasses are stored in steel tanks. The storage is made year-wise. The manufacturing season starts from October and extends upto the month of September of the year following. The dispute in the instant case relates to the year 2002-2003.

3. The case of the appellant is that the storage is subject to dual control of the State Excise and Central Excise authorities and no quantity of molasses can be removed without permit under the state excise law. During the period in question 7,66,175 qtls. of molasses were produced which were stored in steel tanks. As the storage takes place from time to time, it is not possible to immediately know the extent of loss which is a natural phenomenon. At the time of clearance of tanks it transpired that the quantity was short by 1929.55 qtls.(out of total quantity of 7,66,175 qtls. produced). According to the appellant, the shortage worked out to 0.25% of the quantity

produced which was within the permissible limit of loss as per not only the relevant provisions of the State Excise law but also the circular of the Central Board of Excise & Customs No.261/15/82-CX.8 dated 18.7.1983.

Referring to the said circular, learned counsel submitted that the circular provides for permissible storage loss upto 2% subject to the rider that the molasses must be kept in pacca pits/steel tanks. In the instant case, the molasses had been kept in steel tanks. The appellant's case is, therefore, covered by the Board's circular and the Commissioner committed error in disallowing the claim for remission. The demand of duty being consequence of the rejection of claim for remission, both the orders are fit to be set ^{aside} ~~aside~~.

4. On behalf of the Revenue Shri Sumit Kumar, learned Departmental Representative, submitted that in terms of rule 21 of the Central Excise Rules under which remission of excise duty can be allowed, it is essential for the claimant to prove that the loss of goods was by natural causes or due to unavoidable accident, and as in the instant case there is no evidence to show that loss was on account of natural causes or unavoidable accident, the appellant was not entitled to any remission and its claim was, therefore, rightly rejected. He also referred to the Trade Notice dated 1.12.1984 in terms of which the loss of goods is to be reported to the authority within 24 hours which was not complied with in the instant case. This was one of the grounds on which claim for remission was rejected by the Commissioner.

5. In reply, it was submitted on behalf of the appellant that the method of measurement of molasses in sugar factories is 'dip reading' which though not very scientific is in vogue in all sugar factories, and the actual shortage can be found only when the tank is cleared and hence it was not possible for the appellant to report the loss within 24 hours as per the Trade Notice dated

1.12.1984. In this regard reliance was placed on an order of the Tribunal dated 28.8.2007 in the own case of the appellant.

6. It is not in dispute that in terms of circular dated 18.7.1983 (supra), loss of molasses upto 2% is to be treated as permissible storage loss subject to the condition that the molasses is stored in pucca pits/steel tanks. There is no dispute in this case that the molasses had been stored in steel tanks as claimed by the appellant. The point for consideration is whether in a case where the loss of molasses kept in steel tanks does not exceed 2%, the person is required to adduce evidence to prove that the loss was on account of natural causes or unavoidable accident.

7. It is true that remission of duty under rule 21 of the Central Excise Rules (which is the relevant provision in the matter) can be allowed, when the Commissioner is satisfied, inter alia, that the goods were lost or destroyed by natural causes or due to unavoidable accident. It goes without saying that the loss or damage or destruction can take place in various circumstances. The degree and nature of proof would, therefore, depend upon the circumstances in which loss or damage occurred. Thus, for example, where the loss or damage or destruction occurred as a result of fire, the person is expected and, indeed, required to inform the authority about the incident at the first opportunity, he would also be required to prove that he had taken all preventive measures, that is, due care and caution to prevent the incident. However, when the competent authority i.e. the CBEC has taken a general decision to treat loss upto 2% as permissible loss, the person may not be required to prove that the loss was due to natural causes as in the in the case of loss on account of fire etc. It is not in dispute that the storage loss is a natural process, with the passage of time, which can be termed as 'natural cause' and if the Board in its wisdom has taken a general

decision permitting loss upto 2% as falling within the condonable limit, it is to be presumed that the loss upto that quantity was by natural causes and the element of loss by natural causes is implicit in the decision of the Board and the claimant in such a case would not prove further, by evidence, that loss etc. was by natural causes. Such cases would fall within the ambit of rule 21 and the person has to be held entitled to remission of duty subject, of course, to the condition that the molasses had been stored in pucca pits/steel tanks.

8. The basic facts of the case are not being in dispute. I would hold that the appellant had made out a case for remission and the Commissioner committed error in rejecting the claim, and the order dated 31.1.2006 is, therefore, fit to be set aside. That being the position, the order which is subject matter of Excise Appeal No.3439 of 2006, being consequence of rejection of the claim of remission, the impugned order dated 28.4.2006 also is fit to be set aside.

8. The appeals are allowed. The appellants shall be entitled to consequential reliefs, if any.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President

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