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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 24/03/2008

Appeal No. E/800 /2006-SM[BR]

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

To :
M/S U.P.STATE SUGAR CORPORATION LTD.
BIJNOR

M/S U.P.STATE SUGAR CORPORATION LTD. Appellant
Vs
CCE,MEERUT-I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 459 /2008 –SM[BR] dated 18.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   CCE,MEERUT-I
   MANGAL PANDEY NAGAR MEEUT
2. Adv. / Consult SHRI. BIPIN GARG ADV.
   B-1 /1289-A, VASANT KUNJ NEW DELHI -110070

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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

**Excise Appeal No. 800 of 2006 –SM (BR)**

(Arising out of Order-in-Appeal No. 204-CE/MRT-I/2005 dated 2.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I)

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.** | |

U.P. State Sugar Corporation Ltd. Appellant

Vs.

CCE, Meerut-I Respondent

Appearance:
Shri Bipin Garg, Advocate - For appellant
Shri B.S. Suhag, DR - For respondent

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

Date of Hearing: 18.2.2008

Final Order No. 459/2008-SM(BR) dated 18/2/08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby refund filed by the appellant was rejected.

3. The appellants are engaged in the manufacture of sugar. The appellant applied for permission to store the sugar outside the factory premises without payment of duty. The permission was granted on the condition that appellants are liable to pay supervision charges. The appellant acted on the permission granted and stored the sugar outside without payment of duty and also paid the supervision charges as per the condition of the permission. Thereafter, the appellant filed refund claim, the same is the subject matter of the present proceedings. Show-cause notice was issued for denial of refund on the ground that refund is time-barred.

4. The adjudicating authority rejected the refund on the ground that it is time-barred.

5. The Commissioner (Appeals) also rejected the appeal on merit.

6. The contention of the appellant is that the condition imposed by the Revenue regarding payment of supervision charges is not covered under any provision of Central Excise

Act or rules. The appellant relied upon various circulars issued by the Revenue to submit that manufacturer has not to pay any supervision charges. The contention is also that the Commissioner (Appeals) in the impugned order agreed that refund is not time-barred, therefore, the impugned order is beyond the scope of show-cause notice.

7. The contention of the Revenue is that the appellant asked for concession to store the sugar outside the factory without payment of duty and the permission was granted subject to the condition that appellant is liable to pay supervision charges as per the condition imposed in the permission and appellant also paid and thereafter filed a refund claim on the ground that the appellants are not liable to pay supervision charges.

8. I find that the appellant asked for a concession to store the sugar outside the factory without payment of duty and the concession was granted on the condition that supervision charges are to be paid by the appellant. The appellant accepted the condition of the permission and acted accordingly. The appellant stored the sugar outside the

factory without payment of duty and also paid the supervision charges accordingly. The appellant had not challenged the order whereby the permission was granted to store the sugar outside factory on payment of supervision charges. In these circumstances, as the appellant acted on the permission granted and paid accordingly, therefore, subsequently without challenging the order of permission under which the condition was imposed. The appellants are not entitled for refund of amount paid under the condition imposed under the permission. In these circumstances, I find no merit in the appeal, the same is rejected.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM