TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

**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/3904/2006- SM[BR] Date 05/09/2008

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

To :
C.C.E.LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E.LUCKNOW Appellant
Vs
M/S D.S.C.L. SUGAR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1291 / 2008 –SM[BR] dated 11.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent
M/S D.S.C.L. SUGAR
AJBAPUR, LAKHIMPUR KHERI (UP)
2. Adv. / Consult SHRI S.C. KAMARA ADV.
B -2/210 [BASEMENT] SAFDARJUNG ENCLAVE
NEW DELHI -110029
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3904 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.121-CE/LKO/06 dated 29.08.2006 passed by the Commissioner of Central Excise (Appeals), Lucknow]

**Date of Hearing/ Decision:11.08.2008**

**For approval and signature:**

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

---

1. Whether Press Reporters may be allowed to see 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? : Yes

---

CCE, Lucknow ...Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. D.S.C.L. ...Respondent
[Rep. by Shri S.C. Kamara, Advocate]

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

Final Order No..1291/08..../Dated:11.08.2008

**Per P.K. Das:**

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby confiscation of excess quantity of molasses of

15,198.50 quintals, redemption fine and penalty of Rs.5,00,000/- and Rs.1,00,000/- were set aside.

2. After hearing both the sides and on perusal of the records, it is seen that Shri K.K. Dixit, Authorised Signatory of the Respondent in his statement dated 15.01.2005 on the spot stated that the excess stock of molasses found in tank no.2 was due to foaming. He has also stated that the method of determining the stock of molasses by dip method was erroneous.

3. Ld. DR placed the decision of the Tribunal in the case of Kishan Sahkari Chini Mills Ltd. Vs. CCE, Meerut-II reported in 2007 (212) ELT 124 (Tribunal-Delhi), wherein it was held that stock verification on the basis dip rod method adopted for calculating excess production of molasses is justified. So, the contention of the Respondent that the Dip reading method is erroneous, not sustainable.

4. Ld. Advocate on behalf of the Respondent relied upon the decision of the Tribunal in the case of Bajaj Hindustan Ltd. Vs. CCE, Kanpur – 1994 (72) ELT 710 (Tribunal), wherein it has been held that allowance of 10% to be given for foaming during storage of molasses as per ISI specifications. The relevant portion of the said decision is reproduced below:-

> "Heard both sides. ISI specifications clearly indicate that 10% allowance is always given for foaming during storage of molasses. It is also admitted by SDR that excess noticed is within 10%. Since the fact of foaming has not been disputed and it is also a fact that during foaming dip reading

> measurement could not indicate exact weight. We find considerable force in the contentions of the appellants. We, therefore, set aside the impugned order and allow the appeal."

5. In the present case, it is seen that the Authorised Signatory admitted the excess molasses is due to foaming. Ld. DR points out that in the instant case, the excess quantity in tank no.2 was more than 18% of the stock. I find that in view of the decision of the Tribunal in the case of Bajaj Hindustan Ltd. (supra), the Respondent is eligible for allowance of 10% for foaming during storage of molasses. In the present case, it is more than 10%, which is liable to be confiscated. Accordingly, confiscation of excess quantity of molasses of 10% is upheld. Taking into account of all facts and circumstances of the case, the redemption fine and penalty are reduced to Rs.2,00,000/- and Rs.40,000/-. The order of the Commissioner (Appeals) is set aside. The Adjudication Order is modified. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 11.8.2008.

( P.K. Das )
Member (Judicial)

Ckp.