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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**

Appeal No. E/210 -211 / 2007 –SM[BR] Date 07/10/2008

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

To :
(1-2) M/S ROSA SUGAR WORKS
ROSA, SHAHJAHNPUR(UP)
M/S ROSA SUGAR WORKS

Appellant
Vs
Respondent

C.C.E.LUCKNOW

I am directed to transmit herewith a certified copy of **Final order No.** 1349 – 1350 /2008- **SM[BR]** dated 29.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent
   C.C.E.LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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 - 3
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
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-1
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

Appeals Nos.E/210-211/2007-SM (BR)

[Arising out of Order-in-Appeal No.16/COMM/TECH/REM/LKO/06 dated 29.09.2006 & Order-in-Appeal No.15/COMM/TECH/REM/LKO/06 dated 29.09.2006 of the Commissioner of Central Excise (Appeals), Lucknow]

**Date of Hearing/ Decision:29.08.2008**

**For approval and signature:**

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

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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

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M/s. Rosa Sugar Works and Others ....Appellants
[Rep. by Shri Rajesh Chhibber, Advocate]

Vs.

CCE, Lucknow ...Respondent
[Rep. by Shri K.K. Goyal, DR]

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

Final Order No.1349-1350/08-SM(BR)/Dated:29.08.2008

**<u>Per P.K. Das :</u>**

Common issue involved in these appeals and, therefore, both are taken up together for disposal.

2. The Appellants are engaged in the manufacture of sugar and molasses falling under Chapter 17 of the Central Excise Tariff Act, 1985. The Appellants filed applications for remission of duty of Rs.24,750/- and Rs.58,437/- for the period October, 2000 and July, 2003, respectively. which have been rejected by the Commissioner of Central Excise, Lucknow.

3. After hearing both the sides and on perusal of the records, it is seen that there is no dispute that the losses occurred during storage due to driage/seepage at the time of filling of tankers or dispatch of goods. The storage losses claimed were 1.88% and 1.91% respectively of total molasses stored during the relevant period. The Appellant claimed remission of duty as within the permissible limit of 2% as prescribed by the Central Board of Excise & Customs vide letter No.261/15/82-CX.8 dated 18.07.1983. The Commissioner of Central Excise rejected the remission application on the ground that the Appellant could have avoid such losses and they should have made precautionary arrangements. It has also been observed that the Appellant failed to quantify the percentage of losses separately for driage and seepage losses.

4. Ld. DR submits that the claim of the benefit of the Board's Circular is not mandatory and it is applicable on the facts and circumstances of the case as settled by the Hon'ble Allahabad Court in the case Kesar Enterprises Ltd. Vs. CCE, Meerut – 2008 (221) ELT 329 (Allahabad), which has been upheld by the Hon'ble Supreme Court as

reported in 2008 (227) ELT A 31 (SC). In the present case, there is no dispute that that the losses were occurred due to driage at the time of filling of tankers of finished goods. It has been held by the Tribunal in the case of J.K. Sugar Ltd. Vs. CCE, Meerut reported in 2005 (185) ELT 300 (T-D) that Rule 21 of Central Excise Rules, 2002 does not specifically mention "handling" the reference in the Rule to "unavoidable accident at any time before removal" would cover handling losses also. In the present case, there is no dispute that the handling loss is before removal of the goods. There is no material available that the losses were occurred deliberately and/or otherwise. Therefore, the Appellants are eligible for remission of duty. It is noted that the percentage of losses are within the permissible limit of 2% of the Board's Circular. Therefore, the impugned orders are not sustainable and accordingly, both the orders are set aside. The appeals are allowed with consequential relief.

Order dictated & pronounced in open court on 29.08.2008.

( P.K. Das )
Member (Judicial)

Ckp.