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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/5907/2004 – SM[BR] Date 10/11/2008

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

To :
U.P.STATE SUGAR CORPORATION LTD
KHADDA, DISTT. KUSHINAGAR, U.P.
274802

U.P.STATE SUGAR CORPORATION LTD Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1429 / 2008 SM[BR]** dated 4.9.2008 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 ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
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. 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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 04.9.2008

Appeal No.E/5907/2004-SM

(Arising out of Order-in-Original No. MP(Rem.53/2004) 29 of 2004 dated 30.8.2004 passed by the Commissioner Central Excise, Allahabad)

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 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?
3. Whether Their Lordships wish to see the fair copy of the Order?

N

4. Whether Order is to be circulated to the Departmental authorities? Yes

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M/s U.P. State Sugar Corpn. Ltd. Appellant/Applicant
(Shri Bipin Garg, Advocate for the Appellant/Applicant)

Vs.

CCE, Allahabad Respondent
(Rep. by Shri R. K. Verma, DR for the Respondent)

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

Final Order No. 142/08-SM (BR)

Per: P.K. Das

The Appellant filed this appeal against rejection of application for remission of duty of Rs. 76,075.00.

2. After hearing both the sides and on perusal of the records, it is seen that in the year 1998-1999 season the Appellant kept 5,266 Qtls of Sugar in their godowns. Subsequently they found 4,371 Qtls. for reprocessing. The differential quantity of 895 Qtls was storage loss. The Appellant mentioned the storage loss in return RT 7 (C) for the month of March, 2001, and filed remission application on 24.10.2001.

3. The Commissioner of Central Excise rejected the application for remission of duty on the ground that the storage loss could have been avoided if precaution would have been taken for storage of the said sugar. The ld. DR, contended that the storage loss was detected in March, 2001 and they should have informed the department immediately.

4. I find that there was storage loss of 895 Qty. BISS sugar. There is no material on records of illicit clearance of sugar. The Tribunal in the case of Kisan Sahkari Chinni Mills Ltd. Vs. CCE Allahabad reported in 2005 (69) RLT 433 (CESTAT-Del.) held that sugar had not taken for reprocessing being not suitable for human consumption and Revenue could not show any non-accountable or

illicit clearance, demand of duty is not sustainable. In the present case the finding of the Commissioner that the Appellant failed to take precaution for storage loss is, without any basis. There is no material of illicit clearance of sugar. Respectfully following the decision of the Tribunal, the impugned order is set-aside. The appeal is allowed with consequential relief.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta