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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/1582/2005-SM[BR] Date 05/06/2008

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

To :
U.P.STATE SUGAR CORPORATION LTD.

DISTT. BIJNOR, U.P.

246701

U.P.STATE SUGAR CORPORATION LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 861 /2008 –SM[BR] dated 27.3.2008

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. 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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.1582 /2005-SM

(Arising out of order in appeal No. 19/CE/Appl/MRT.I/05 dated 28.2.2005 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

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 ?

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

M/s UP State Sugar Corporation Ltd Appellants
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Meerut-I Respondent
(Rep. by Shri Atul Rastogi, DR)

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

Date of Hearing: 27.3.2008

Final Order No. 861 /2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. In ER-I return for the month of April, 2002, the appellant had shown approximately the quantity of 510 MT Molasses was drained out from storage tanks. There is a correspondence between the appellant and the Department. It is contended by the appellant that loss of molasses is due to overflow and draining out from storage tanks. It is further contended that this was happened due to non-lifting of molasses by the specified buyers. Adjudicating Authority confirmed the demand of duty on the losses occurred due to overflows and drained out of molasses. The Commissioner (Appeals) observed that it cannot be said to be natural loss but it should have been stopped by making alternative arrangement in storage.

3. It is seen that the Hon'ble Allahabad High Court in the case of Partappur Sugar and Industries Ltd Vs Assistant Collector reported in 1992 (58) ELT 452 held that over flow of molasses having taken place due to circumstances beyond the control of manufacturer, Central Excise duty not payable on molasses lost. The learned Advocate submits that the decision of the Hon'ble High Court was upheld by the Hon'ble Supreme Court in SLP No.14476/1991 dated 19.9.91. I agree that the submission of the learned DR that the lower authorities has not examined the issue of loss due to over flowing/drained out of molasses. Hence I find that the matter is required to be examined by the lower authorities in the facts and law of the case.

4. Accordingly, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to examine the facts and law

of the case and to decide in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*