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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 25/08/2008

Appeal No. E/2142/2006-SM[BR]

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

To :
M/S TRIVENI ENGG & IND LTD
UNIT DEOBAND,DISTT SAHARANPUR — Appellant
Vs
M/S TRIVENI ENGG & IND LTD — Respondent

CCE,MEERUT-I

I am directed to transmit herewith a certified copy of **Final order No.** 1171 / 2008 –SM[BR] dated 15.7.2008 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
   DO
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 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.2142/06-SM (BR)

[Arising out of common Order-in-Appeal No.19-20/Commissioner/Meerut-I/2006 dated 28.04.2006 passed by the Commissioner of Central Excise & Customs, Meerut-I]

Date of Hearing/ Decision:15.07.2008

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? :
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. Triveni Engg. & Industries Ltd. ...Appellants

[Rep. by Shri R. Chhibber, Advocate]

Vs.

CCE,Meerut-I ...Respondent

[Rep. by Shri B.S. Suhag, DR]

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

Final Order No.1171/2008-SM(BR)/Dated:15.07.2008

Per P.K. Das:

The Appellant filed this appeal against rejection of applications for remission of duty. The Appellant filed remission applications dated 28.8.2002 and 31.01.2006 for remission of duty on 115.20 quintals of Molasses of the season 2001-2002 and 17.30 quintals of Molasses of the season 2004-2005 respectively. The Commissioner of Central Excise rejected the remission applications on the ground that the Appellant failed to send first information regarding loss and destruction of goods within 24 hours of occurring of the accident to the Department, as required under Trade Notice No. 206/84 dated 1.12.84. She further observed that the Appellant did not pinpoint about the actual cause that lead to losses in molasses in both the sugar seasons.

2. After hearing both the sides and on perusal of the records, it is seen from the Adjudication Order that the Appellant in their remission application dated 28.08.02 submitted that during the sugar season 2001-2002, a total quantity of 149100 quintals of molasses was produced and stored by them in two steel storage tanks and out of which 148984.80 quintals was dispatched, and thus a quantity of 115.20 quintals of molasses was lost. In their application dated 31.01.2006, the appellant submitted that during the sugar season 2004-2005, a total quantity of 680230 quintals of molasses was produced and stored by them, and out of which 680212.70 quintals was dispatched, and thus a quantity of 17.30 quintals of molasses was lost in steel tank no.1.

3. The Appellant also contended before the Adjudicating Authority that there is always some loss of molasses due to evaporation, handling & spillage from the pipe line and valves which is a natural cause and a normal feature which took place every day and cannot be avoided at all. The Appellant further submitted that when the molasses is transferred to steel tanks and cleared by pumps and valves a small quantity of molasses

is ought to be lost due to leakage and spillage form the pumps & valves and some weight is also ought to be reduced due to evaporation. The Appellant further submitted that these types of losses couldn't be checked until the tank is not emptied.

4. In view of the above submissions, I find that the Appellant had given reasons for handling and storage losses occurred during the relevant season. So, the finding of the Commissioner (Appeals), in this issue, is not sustainable. The Tribunal in the case of Ramala Sehkari Chinni Mills Ltd. Vs. CCE, Meerut-I reported in 2007 (213) ELT 361 (Tribunal-Delhi) held that intimation to Range Superintendent within 24 hours only in case of loss or destruction of goods by natural causes or accident such as flood, cyclone, fire, etc. is required. It has further been held that intimation to Range Superintendent that losses occurring due to storage as well as leakage while transferring molasses to tankers 'handling losses' are not required within 24 hours. It is noted that in these cases, the losses are much below to 2% as allowed by the Board Circular. So, the findings of the Commissioner is also not sustainable in this regard.

5. In view of the above discussions, the impugned order is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 15.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.