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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/112 /2007-SM[BR]   Date 29/08/2008

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

To :
M/S ROSA SUGAR WORKS
P.O. ROSA, SHAHJAHANPUR, U.P.

M/S ROSA SUGAR WORKS   Appellant
Vs
C.C.E. LUCKNOW   Respondent

I am directed to transmit herewith a certified copy of **Final order No 1204 / 2008 –SM[BR]**. dated 8.8.2008 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 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

In Excise Appeal No.112 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.133-CE/APPL/LKO/06 dated 19.10.2006 passed by the Commissioner of Central Excise, Lucknow (Appeals)]

Date of Hearing/ Decision:8.08.2008

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

NO.

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

Vs.

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

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

Final Order No.1204/08-SM(BR)/Dated:8.8.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of sugar and molasses classifiable under Headings Nos.1701.31 and 1701.39 of the Schedule to the Central Excise

Tariff, Act, 1985. On 15.01.2005, the Central Excise Officers visited the Appellant's factory and conducted stock verification. The said officers found excess quantity of 1461.45 quintals of molasses compared to records. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.1,00,000/- and penalty of Rs.50,000/- . The Commissioner (Appeals) upheld the Adjudication Order.

2. The ld. Advocate on behalf of the Appellants submits that the Authorised Signatory in his statement on the spot ~~initiated~~ informed that the excess stock is due to foaming in the molasses. He further submits that the excess quantity is approximately 2%. He relied upon the decision of the Tribunal as under:-

(a) M/s. Bajaj Hindustan Ltd. Vs. CCE -1994 (72) ELT 710(T)

(b) Ghatampur Sugar Co. Ltd. Vs.CCE
1996 (85) ELT 69 (Tribunal).

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Department has not accepted that the excess quantity was arising out of the foaming of the molasses. He further submits that the State Excise Authorities is posted for 24 hours at factory and they have not stated that the excess quantity is due to foaming in the molasses and, therefore, the reason explained by the Appellant is not acceptable.

4. After hearing both the sides and on perusal of the records, it is seen from the show cause notice that on being asked to explain the excess stock of molasses weighing 1461.45 Qtls., Shri Shoorveer Singh, Authorised Signatory submitted that this excess stock is due to foaming

in the molasses. The Adjudicating Authority observed that the Appellants have not produced any documentary evidence in regard to excess quantity found during stock verification. I find that the Appellants explained the reasons for excess quantity, which was not disputed in the show cause notice. In any event, the Tribunal in the case of Bajaj Hindustan Ltd. (supra) held that allowance of 10% is to be given for foaming of storage of molasses for excess/shortage in stock. The relevant portion of the Tribunal's order is reproduced below:-

> "6. Heard both sides. ISI specifications clearly indicate that 10% allowance is always give 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. It is also noted that the Appellants' factory is under the physical control of U.P. Excise Authorities. It is contended by the Appellants that the excess quantity of molasses was found due to processing of raw materials. Ld. Advocate contended that the excess quantity is approximately 2.1%, which is within the limit of ISI specifications. In view of the decision of the Tribunal in the case of Bajaj Hindustan Ltd. (supra), I find that redemption fine and imposition of final penalty are not

warranted . Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 8.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.