TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/127 /2007 – SM[BR] Date 27/11/2008

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW (UP)

C.C.E. LUCKNOW Appellant

Vs

M/S KISAN SAHKARI CHINI MILLS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1542 / 2008- **SM[BR]** dated 23.10.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S KISAN SAHKARI CHINI MILLS LTD.
   SAMPURNANAGAR, DISTT. LAKHIMPUR KHIRI.
2. Adv. / Consult
   MR.VIKRANT KACKRIA
   509, SEC-7,PANCHKULA, HARYANA

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)

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

E/Appeal Nos.127/07-SM(BR)

(Arising out of order in appeal No.130/CE/LKO/06 dated 28.8.06 passed by the Commissioner of Central Excise (Appeals), Lucknow)

For approval and signature:

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

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?

No.

Yes.

CCE, Lucknow — Appellant
(Rep. by Shri Sansar Chand, DR)

Vs

M/s Kisan Sehkari Chini Mills — Respondent
(Rep. by Shri Vikrant Kackria, Advocate)

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

Date of Hearing: 23.10.08

Final Order No. 1542 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of sugar in two categories i.e. 'levy' and 'free sale' sugar charged to specific rate of excise duty at the rate of Rs.52/- per quintal and Rs.85/- per quintal respectively. It has been alleged that during the period December, 1997 to March, 1998, the respondents cleared 856 MT of levy sugar from free sale sugar stock at lower rate of duty. Subsequently, it was noticed that the said quantity was converted to free sale sugar but the respondents had not paid duty. However, the respondents deposited the duty amounting to Rs. 2,82,546/- on 31st July, 2001 in their PLA. The Adjudicating Authority confirmed the demand of duty and appropriated the said amount as deposited by them. He imposed a penalty of Rs. 1 lakh under Rule 173-Q of the erstwhile Central Excise Rules, 1944. The Commissioner (Appeals) set aside the penalty ~~and~~ in the respondents deposited the duty before issue of show cause notice. Hence the Revenue filed this appeal.

2. After hearing both the sides and on perusal of the record, I find that the respondents paid the differential duty on conversion of levy sugar to free sale sugar after clearance of the goods and upon detection by the Central Excise officers during scrutiny of record. The main contention of the respondents is that there was no malafide and suppression of fact with intent to evade payment of duty and therefore, no penalty should be imposed.

3. I find that the respondents cleared the sugar at lower rate of duty and thereafter the said sugar was converted to free sale sugar and duty was not paid by them. So, there is no violation of rules and penalty is imposable. The Commissioner (Appeals) has set aside the penalty on the ground that duty was deposited before issue of show cause notice is not sustainable.

4. In view of that, the order of the commissioner (Appeals) is set aside and the adjudication order is restored. However, considering the facts and circumstances of the case, penalty is reduced to Rs.30,000/-. The appeal filed by the Revenue is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*