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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/3588/2006 – SM[BR] Date 01/12/2008

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

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

C.C.E.LUCKNOW Appellant

Vs

M/S KISAN SAHKARI CHINI MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1551 / 2008- **SM[BR]** dated 16.10.2008 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
   SATHA, ALIGARH.
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
   H.NO. 509 , SECTOR -7, PANCHKULA[H.R.]

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3588 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.89-CE/Lko/06 dated 12.07.2006 passed by the Commissioner of Central Excise (Appeals), Lucknow]

Date of Hearing/ Decision:16.10.08

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

Yes

CCE, Lucknow ...Appellants

[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. Kisan Sahkari Chini Mills ...Respondent

[Rep. by Shri Vikrant Kakria, Advocate]

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

Final Order No.1551/08-SM(BR)/Dated:16.10.2008

Per P.K. Das:

Revenue filed this appeal against the Order –in-Appeal dated 12.07.2006 passed by the Commissioner of Central Excise (Appeals), Lucknow, whereby Adjudication Order was set aside.

2. The Respondents are engaged in the manufacture of sugar and molasses classifiable under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. They availed Cenvat Credit facility on inputs. It has been alleged that the Respondents cleared Baggase, a by-product at nil rate of duty without reversal of the credit under Rule 57AD or Rule 6 (2) of the Centvat Credit Rules, 2002 as the duty paid inputs were used in the manufacture of dutiable and exempted finished goods. The Adjudicating Authority confirmed the recovery of the amount under the said Rules and imposed penalty. The Commissioner (Appeals) set aside the Adjudications Order. Hence, Revenue filed this appeal.

3. After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Commissioner of Central Excise, Meerut Vs. Shakumbari Sugar & Allied Inds. Ltd. - 2004 (176) ELT 819 (T-D), which has been upheld by the Hon'ble Supreme Court reported in 2005 (189) ELT A-62 (SC). It has been held that Baggase obtained in the course of manufacture of sugar out of cane sugar may find a mention in the Schedule to the Central Excise Tariff Act but it has not become a final product as it is a waste obtained during the manufacture of sugar. It has further been observed that waste can not be regarded as a final product. Hence, provisons of Rule 57 CC of the erstwhile Central Excise Rules, 1944 is not applicable. Ld. DR on behalf of the Revenue submits that the

said decision has not considered the marketability of the baggase. I find that the Tribunal held that waste cannot be regarded as a final product and, therefore, the submission of the ld. DR has no merit. Accordingly, the appeal filed by the Revenue is rejected.

dictated & pronounced in open court on 16.10.2008.

(P.K. Das)
Member (Judicial)

Ckp.