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/359 /2007 – SM[BR]&E/CO/ 69 / 2007 –SM[BR]

Date 05/01/2009

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

To :
C.C.E, MEERUT-II

OPP. SHAHEED PARK (NEAR ASHOK KILAT), DELHI
ROAD, MEERUT(U.P)
C.C.E, MEERUT-II

Appellant
Vs
VENUS SUGAR LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1667 /2008- **SM[BR]** dated 29.12.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

VENUS SUGAR LTD.

MAZHAWALI, DISTT. MORADABAD.

2. Adv. / Consult SHRI S.K.GHADOK C.A.
133/6, SHASTRI NAGAR, MEERUT

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,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Excise Appeal No. 359 of 2007-SM & C.O. No.69 of 2007-SM
[Arising out of Order-in-Appeal No. 218-CE/MRT-II/2006 dated 30.11.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-II]

Date of Hearing/Decision : 26.12.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Meerut-II — Appellant

Vs.

M/s Venus Sugar Limited — Respondent

Appearance:

Mr. S.K. Bhaskar, DR for the appellant
Mr. S.K. Ghadok, Advocate for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1667/08-SM (BR)

Per Jyoti Balasundaram:

In this case show cause notice dated 23.10.1997 was issued to the respondent sugar mill proposing recovery of duty on 12719.50 qtls. of molasses found short and alleged to have been cleared without payment of duty; the adjudicating authority, vide Order-in-original dated 20.9.2005 upheld the charge of clearance of 11599.60 qtls. of molasses without payment of duty and confirmed demand on the above mentioned quantity, confiscated sugar seized, with an option to redeem on payment of fine and imposed penalty of Rs. 5 lakhs; the assessee came up in appeal before the Commissioner (Appeals) who vide his Order-in-appeal No. 3/2006 dated 19.01.2006 upheld the order of the Additional Commissioner; the assessee filed appeal No. E/1502 of 2006 before the Tribunal, which vide its final order No.212/08-SM(Br.) dated 02.01.2008, remitted the case for fresh decision to the adjudicating authority. It is stated that the case is still pending after the above remand order.

2. The Commissioner preferred an appeal before the Commissioner (Appeals) on the ground that the entire quantity alleged to have been found short should have been confirmed by the adjudicating authority. The Commissioner (Appeals) dismissed the appeal of the Revenue as not maintainable for the reason that the Order-in-appeal dated 19.01.2006 had already been passed against the Order-in-original No. 24/ADDL.COMM/M-II/2005 dated 20.9.2005 of the Additional Commissioner and therefore, the Order-in-original merges with the said Order-in-appeal. Hence this appeal by the Revenue.

3. On hearing both sides and noting the decision of the Hon'ble Supreme Court in the case of Mauria Udyog Limited vs. CCE, Delhi-II reported in 2002 (146) ELT 37 (SC) holding that principle of merger has no applicability to a case where the Revenue agitates extension of part relief to an assessee, which cannot result in dismissal of assessee's appeal by application of principle of merger, I agree with the learned DR that the Commissioner (Appeals) should have decided the issue on merits and should not have dismissed the Revenue's appeal on the ground of non-maintainability. In these circumstances, I set aside the impugned order and remand the case for fresh decision to the adjudicating authority for fresh

hearing alongwith the assessee's appeal which has already been remanded by the Tribunal by final order No. 212/08-SM(Br.) dated 02.01.2008. Fresh decision has to be passed after extending reasonable opportunity to the assessees of being heard in their defence. The appeal is thus allowed by way of remand.

4. The Cross-objection is in the form of comments on the Revenue's appeal and is hence dismissed.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]