

**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/1980/2006-SM[BR]

Date 10/04/2008

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


To :  
M/S J.H.V. SUGAR LTD  
THE GENERAL MANAGER, GADAURA, DISTT.  
MAHARAJGANJ, UTTAR PRADESH  
M/S J.H.V. SUGAR LTD

Appellant

Vs  
Respondent

THE COMMISSIONER OF CENTRAL EXCISE  
ALLAHABAD

I am directed to transmit herewith a certified copy of Final order No. 613 /2008 -SM[BR] dated 15.1.2008  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar

(SM Appeal Branch)

**Copy to :**

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE ALLAHABAD

38, M.G.MARG, CIVIL LINES, ALLAHABAD

2. Adv. / Consult

MR.KAPIL VAISH

B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

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 Publications (P) Ltd., 1512-B, Bhisim 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. Office Copy

15. 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. III**

**Excise Appeal No.1980 of 2006-SM (BR)**

[Arising out of order in appeal No.81/CE/ALLAHABAD/05 Dated 24/8/2005  
passed by the Commissioner (Appeals) Central Excise, Allahabad]

**Date of Hearing/ Decision:15.1.2008**

**For approval and signature:**

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

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|--|---|---|
| 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? | : | M |
| 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. J.H.V. Sugar Ltd.

Appellants  
[Rep. by Mr. Kapil Vaish, C.A.]

Vs.

CCE, Allahabad

Respondent  
[Rep. by Mr. Rajmal, SDR]

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

Final ORDER NO. 613 | 02-SM(BR)/Dated: 15.1.2008

Per P.K. Das:

Heard both sides and perused the records.

2. The appellants are engaged in the manufacture of Sugar and Molasses. The relevant facts of the case, in brief, are that the appellant's Cane Milling Plant was badly damaged and they received insurance claim against surrendering of damaged machine to the Insurance Company during the financial year 2000-2001. It has been alleged in the show cause notice that the appellants sold/adjusted cane-milling plant during the financial year 2000-2001. The appellant received insurance claim against surrendering of damaged machine to the Insurance Company. It has been alleged that the transaction amounted to the clearance to the damaged machine and duty is payable on the amount of insurance claim under Rule 57S (2)(c) of the erstwhile Central Excise Rules, 1944. The adjudicating authority confirmed the demand of duty of Rs.1,74,004/- and imposed penalty of equal amount along with interest. The Commissioner (Appeals) upheld the adjudication order.

3. Ld. Counsel on behalf of the appellant submits that the insurance claim was received by the appellant after 1.4.2000. He further submits that Rule 57S(2)(c) is applicable upto 31.3.2000 and there was no provision of

payment of duty for clearance of the capital goods. He relied upon the decision of the Tribunal in the following cases:-

- (1) CCE, Jaipur Vs. Birla Corporation Ltd. & Ors.  
2005 (67) RLT 51 (T-Delhi)
- (2) Kisan Sahkari Chini Mills Ltd. Vs. CCE, Meerut  
Final Order No.961/06-SM (BR) dated 22.6.2006

He further submits that demand is barred by limitation as the show cause notice was issued on 26.8.2004.

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants received the insurance claim on clearance of the damaged machines, where the credit was availed and, therefore, they are liable to pay the duty on the damaged machines.

5. After hearing both the sides, I find that it is revealed from the show cause notice that the damaged machines sold/adjusted during the financial year 2000-2001. Rule 57 S (2) ( c ) of the erstwhile Central Excise Rules, 1944 was not in force during the financial year 2000-2001. In the case of Birla Corporation Ltd. (supra), it is seen that during the relevant period sub-rule 1 (c) of Rule 57 AB of the erstwhile Rules provides that when inputs or capital goods, on which credit has been taken and cleared as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable on

such goods. In this case, there is no dispute that the appellant did not remove the capital goods as such. It is seen that the Tribunal in the case of Birla Corporation Ltd. and Ors. (supra) on the similar provisions under Rule 3 (4) of the Cenvat Credit Rules, 2001 held that there is no provision for payment of duty on clearance of the waste and scrap arising during the use and dismantling of the goods. It has further been observed that there is no process of manufacture involved, wear and tear waste and scrap arising during use or dismantling of the capital goods, not chargeable to duty. I find that when there was no provision for demand of duty on the waste and scrap of the capital goods during the material period, demand of duty 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 15.1.2008.

( P.K. Das )  
Member (Judicial)

Ckp.