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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/1893/2006-SM[BR] Date 12/05/2008

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
C.C.E ALLAHABAD Appellant
Vs
M/S KISAN SAHKARI CHINI MILLS LTD, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 738 /2008 –SM[BR] dated 22.4.2008 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,
SATHION,AZAMGARH(UP)
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
N /V ;-------------
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. Office Copy
15. 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.1893 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.26-CE/ALLD/2006 dated 10.03.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad (U.P.)]

Date of Hearing/ Decision:22.4.2008

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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

CCE, Allahabad (U.P.) ...Appellants
[Rep. by Shri S.L. Meena, DR]

Vs.

M/s. Kisan Sahkari Chini Mills Ltd. ...Respondent
[Rep. by Shri Vikrant Kackria, Advocate]

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

Final Order No.738/08-SM(BR)/Dated:22.4.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of sugar and molasses classifiable under Heading 1701 and 1703 of the Schedule to the Central Excise Tariff Act, 1985. It is stated that during the course of manufacture of the final products, the bagasee is also emerged as a bye-product, which was cleared by the Respondent without payment of duty. Show cause notice was issued proposing to pay the amount under Rule

57CC of the erstwhile Central Excise Tariff Act, 1944 and Rule 6 of the Cenvat Credit Rules, 2002 on the clearance of the molasses without payment of duty. The Adjudicating Authority confirmed the demand and imposed penalty. The Commissioner (Appeals) set aside the Adjudication Order following the decision of the Tribunal.

2. After hearing both the sides and on perusal of the records, the relevant portion of the findings of the Commissioner (Appeals) is reproduced below:-

> "6. I have given a careful consideration to the submissions made by the appellant. The moot question that arises for my consideration is whether bagasse, emerging during the course of manufacture of sugar and molasses is a final product, or waste and residue. A similar issue had arisen before the Hon'ble CESTAT in the case of Commissioner of Central Excise, Meerut vs. Gangeshwar Ltd. In that case, the Hon'ble Tribunal while relying upon its decision in the case of Rudra Bilas Sahkari Chini Mills Ltd., -2000 (121) ELT 119 (Trib.) supra, had held in its order No. 601/2005-NB(A) dated 18.3.2005, that bagasse is a waste and residue of sugar industries and cannot be termed as a final product. Therefore, provisions of Rule 57CC of erstwhile Central Excise Rules, 1944 are not applicable in respect of clearance of bagasse and press-mud. Against the above order of the CESTAT, the Commissioner, Central Excise, Meerut filed a Civil Appeal No. D15405 of 2005 before the Hon'ble Supreme Court, as reported in 2006 ELT (193) page A-194, which has been dismissed, thus giving finality to the above finding of the Hon'ble CESTAT the 'bagasse is waste and residue of the Sugar Industries. Similar view has been held by Hon'ble Supreme Court in case of Shakumbari Sugar & Allied Industries Ltd., supra relied by the appellants. Therefore, the decision of the Hon'ble Madras High Court in the case of Devar Sugar and Akhbari Co. Ltd., supra and relied upon in the impugned order, now holds no more any legal ground. As such neither the provisions of Rule 57CC and 6(3) (b) of the Central Excise Rules nor any penal provisions of the Central Excise Act and the Rules are invokable. Therefore, I am of considered view that the appeal of the appellant succeeds on merit".

3. Ld. DR on behalf of the Revenue submits that the Commissioner (Appeals) relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Meerut Vs. M/s. Gangeswar Ltd. in Civil Appeal No.D-15405 of 2005, which has been dismissed by the Hon'ble Supreme Court summarily and as such it cannot be held to be affirmation of view of Tribunal being non-reasoned and non-speaking.

4. I find that the Division Bench of the Tribunal in the case of CCE, Meerut Vs. Mahalakshmi Sugar Mills Ltd. & Ors. Reported in 2004 (61) RLT 514 (CESTAT-Delhi) held that Rule 57 CC of the Central Excise Rules, 1944 is not applicable on the ~~doctrine~~ of buy-product, namely "Bagasee". It is seen that the Division Bench of the Tribunal relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Meerut Vs. Titaawi Sugar Complex reported in 2003 (54) ELT 859 (SC). The Tribunal in the case of CCE, Meerut-I Vs. Kisan Sahkari Chini Mills Ltd. Vide Final Order dated 1st December, 2006 following the decision of the Tribunal in the case of Mahalakshmi Sugar Mills (supra) rejected the appeal filed by the Revenue. In view of the above, I do not find any merit in the appeal filed by the Revenue. Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 22.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.