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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/1309/2006-SM[BR] Date 14/05/2008

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.** 766 /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,DISTT AZAMGARH(UP)
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
   H. NO. 509 , SECTOR -7, PANCHKULA [HR]

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.1309 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.08-CE/ALLD/2006 dated 24.1.2006 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? :
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. 766/08-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

Headings 1701 and 1703 of the Schedule to the Central Excise Tariff Act, 1985. On scrutiny of the Balance Sheet and General Ledger by the Audit Party, it was noticed that the Respondent purchased DG sets involving Central Excise Duty of Rs.72,966/- in the month of October, 2002 and simultaneously, claimed the Cenvat Credit and deprecation on capitalization on the total cost of D.G. set including Central Excise Duty under Section 32 of Income Tax Act, 1962, which is not permissible under Rule 4 (4) of the Cenvat Credit Rules, 2002. The Respondent immediately reversed the Credit of Rs.72,966/- vide Debit Entry No.02 dated 16.10.2003 in their RG-23 A Part-II Account upon detection by the Audit party. A show cause notice dated 30.05.05 was issued proposing to appropriate the amount of duty as deposited by the Respondent and to impose penalty. The Adjudicating Authority confirmed/appropriated the credit as reversed by the Respondent and also imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944 along with interest. The Commissioner (Appeals) set aside the Adjudication order on the ground that the demand is barred by limitation.

2. After hearing both the sides and on perusal of the records, I find that the Respondent deposited the duty voluntarily upon detection by the Audit party without any protest. The Respondent had not filed any refund claim against the said amount. The Adjudicating Authority appropriated the amount as the credit was reversed by the Respondent. So, the findings of the Commissioner (Appeals) that the demand of duty is barred by

limitation is without any substance. However, I agree with the findings of the Commissioner (Appeals) that there is no suppression of facts with intent to evade payment of duty and, therefore, the penalty and interest are not sustainable.

3. In view of the above, the order of the Commissioner (Appeals) is modified insofar as the demand of duty confirmed and appropriated by the Adjudicating Authority is upheld. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 22.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.