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/1576/2007 – SM [BR] Date 16/02/2009

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

To :
GHATAMPUR SUGAR CO.LTD
GHATAMPUR, KANPUR NAGAR,(UP)

GHATAMPUR SUGAR CO.LTD Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 169 / 2009 –SM[BR]** dated 16.1.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

E./1576/2007-SM
[Arising out of Order-in Appeal No.78-CE/APPL/KNP/2007 dated 01.03.2007 of Commissioner (Appeals), Kanpur].

Date of Hearing:16.1.09

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Ghatampur Sugar Co. Ltd. ...Appellant
[Represented by Shri Bipin Garg, Advocate]

Vs.

CCE, Kanpur ... Respondent
[Represented by Shri M.M.Singh, DR]

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final ORDER NO.169/09-SM(BR) DATED: 16.01.2009

PER: **RAKESH KUMAR**

The appellant in the year 1996-97 had obtained Commissioner's permission for storage of non-duty-paid sugar in outside godown, for which as per Commissioner's direction, they have furnished cash security of Rs.9,35,000/. Subsequently, on clearance of the sugar on payment of duty, the appellant sought refund of the cash security. The Asstt. Commissioner vide Memorandum dated 13.2.98 ordered the refund of the cash security but after deducting an amount of Rs.3,78,019/- (Rs.3,60,790 + Rs.17,229/-) as these amounts were due from the appellant as per Jurisdictional Superintendent's letters intimating that these amounts are payable by the appellant, as they had stored non-duty paid molasses inside the factory but in Kacha pits without obtaining required permission. Accordingly, the Asstt. Commissioner refunded the balance amount of Rs.5,56,391/-. Against this order, the appellant filed an appeal before the Commissioner (Appeals), who vide the impugned order in appeal dated 1.3.07, while setting aside the Asstt. Commissioner's order observing that mere reference to Range Officer's report without giving any details of arrears is incomplete and vague and against the natural justice, remanded the matter to the adjudicating authority for passing a speaking order by disclosing the details of demands which have been adjusted and after affording an opportunity of personal hearing to the appellant to defend their case. The appellant have filed present appeal against this order praying for refund of the balance security amount of Rs.3,78,019/-. It has also been pleaded in the appeal that in spite of the Commissioner (Appeals)'s order for finalising the refund matter, till now no action has been taken by the Asstt. Commissioner.

2. Heard both the sides. Shri Vipin Garg, Advocate, ld Counsel for the appellant, pleaded that as rightly observed by the Commissioner (Appeals) in the impugned order in terms of the Tribunal's judgement in the case of Voltas Ltd. Vs. CCE, Hyderabad-II reported in 2006 (76) RLT 257 (Cestat-Ban.), the amount pending as arrears cannot be adjusted against the refund sanctioned, if the appeal against the order confirming duty is pending decision in appeal, and that in the present case the amounts of Rs.3,60,790 and Rs.17,229/- mentioned in the Superintendent's letters as due from the appellant are not even arrears and it is also not known as to whether the molasses has by now been cleared on payment of duty. Shri Garg, therefore pleaded that he would be satisfied if the Asstt. Commissioner is directed to decide this matter keeping in view the above mentioned judgement of the Tribunal and also the Commissioner (Appeals)'s directions.

3. Shri M.M. Singh, ld. DR pleaded that he has no objection if directions are issued to the Assistant Commissioner for disposal of this matter within shortest possible time.

4. I have carefully considered the submissions from both the sides. There is no dispute that the security amount of

but
Rs.9,35,000/- is refundable to the appellant ~~cost~~ only a part of the same has been refunded. The dispute is about the balance amount of Rs.3,78,019/- which the Asstt. Commissioner has adjusted against the arrears of revenue. However, from the Asst. Commissioner's order dated 13.2.98, the arrears referred to in the order are those communicated by the Range Officer, as recoverable from the appellant for storage of molasses in Kachapits without Commissioner's permission. Just because the Range Superintendent writes to an assessee that a particular amount is recoverable from him without giving any personal hearing, the same cannot be treated as arrears. As held by the Tribunal in the case of Voltas Vs. CCE (Supra), the amount pending as arrears cannot be adjusted against the refund sanctioned, if the appeal against the order confirming duty is pending decision in appeal, while in this case, the amount which has been deducted from the refund claim cannot even be called arrears. Since the matter has already been remanded to the Asstt. Commissioner, the Asstt. Commissioner is, therefore, directed to decide the same within a period of **3** months from the date of this order. The appeal ~~is~~ stands disposed of as above.

[Pronounced in the open Court on 16.01.2009]

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita