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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/1975/2007 – SM[BR] Date 05/05/2009

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

To :
U.P. STATE SUGAR CO.
AMROHA, DISTT. J.P. NAGAR
244245

U.P. STATE SUGAR CO. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 345/ 2009 –SM[BR] dated 6.4.2009

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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
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. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/1975/07-SM

[Arising out of Order-in-Appeal No.96-CE/MRT-II/07 dt.30.4.07 passed by the Commissioner(Appeals), Meerut-II)

For approval and signature:

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

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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 would 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 : Department Authorities:

M/s. U.P. State Sugar Corpn. Ltd. Appellant

Versus

CCE, Meerut-II Respondent

Appearance
Shri Atul Gupta, CS for the Appellant
Shri R.K.Verma, Authorised Departmental Representative(DR) For Respondent

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

Date of decision: 6.4.09
Final Order No. 345/09-SM(BR)

Per Rakesh Kumar:

The Appellant M/s. U.P.State Sugar Corpn. is an undertaking of the Govt. of U.P. In this appeal, the Appellant has challenged penalty under Section 11AC upheld by the Commissioner(Appeals) by the impugned order-in-appeal No.96-CE/MRT-II/07 dt.30.4.07. The facts leading to this appeal are, in brief, as under:

2. The Appellant have sugar mill at Amroha. On 1.6.06, General Manager of the Appellant's company addressed a letter to the Supdt. of Central Excise, Range - Amroha informing him that their head office team visited the Amroha factory on 30th and 31st May'06 and conducted physical stock verification of sugar godown, in the course of which shortage of 1826 qtls. was found and that they are prepared to deposit Central Excise Duty on this quantity and debit it in the RG.I Register. The Central Excise Duty on 1826 qtls. was paid on 2.6.06. On receipt of the communication from the Appellant, the Central Excise Range Officer also deputed a Central Excise team for stock verification, in course of which, another shortage of 87 qtls. was found. On this quantity also, the duty was paid on 7.6.06. Subsequently, a SCN was issued to the Appellant for confirming the duty demand on the shortage and also imposition of penalty on them under Section 11AC of the Central Excise Act. The Asstt. Commissioner vide order-in-original No.112 dt.12.10.06 confirmed the duty demand of Rs.1,65,908/- and ordered appropriation of the amount deposited by the Appellant on 2.6.06 and 7.6.06 towards this

demand. The Asstt. Commissioner also imposed an equal penalty under Section 11AC. The Commissioner(Appeals) vide order-in-appeal dt.30.4.07 upheld the Asstt. Commisisoner's order including imposition of penalty under Section 11AC. The Appellants are in appeal against part of the Commissioner(Appeals)'s order upholding the imposition of penalty.

2.1 Heard both the sides.

2.2 Shri Atul Gupta, Company Secretary, Ld. Counsel for the Appellant pleaded that shortage of 1826 qtls. had been adopted by the Appellant headquarter staff and was promptly reported to the Jurisdictional Central Excise Officers, that this shortage was due to clandestine removal due to pilferage of the sugar with the connivance of the officers of the Appellant ~~firm~~ against which FIR has been lodged; that no malafide in respect of removal of this quantity can be attached to the Appellant corporation; that the shortage of 87 qtls. was in respect of the stock of sugar pertaining to 2002-03 period; that in respect of this quantity also, duty had been paid on 7.6.06; that the Appellant being a Govt. of U.P. Undertaking, there cannot be intention on their part to evade the duty when the entire duty on the shortage had been paid immediately after it was ~~deducted~~ detected and duty payment was much before the issue of SCN and that when bulk of the shortage of 1826 qtls. had been detected by the Appellant themselves, no malafide can be attributed to them. He also cited the Tribunal's judgment in the case of Best

Undertaking vs CCE, Mumbai reported in 2007(213)ELT.202 wherein it was held that the Appellant being a local authority constituted under Mumbai Municipal Corporation Act,1988 and as such a "State" under Article 12 of Constitution of India, there cannot be any motive on their part to evade the duty and therefore, there is no justification of imposition of penalty under Section 11AC when the entire duty has been paid even before the issue of SCN. Another judgment cited was in the case of Markfed Refined Oil & Allied Inds. vs CCE, Jalandhar reported in 2008(229)ELT.557 wherein it was held that when there was no material on record showing that the Appellant, which is Govt. undertaking, had any positive intention to evade duty and there is no allegation of fraud, collusion etc., there is no justification for imposition of penalty under Section 11AC. In view of this, he pleaded that the penalty on the Appellant may be set aside.

2.3 Shri R.K.Verma, Ld. DR pleaded that this is admittedly a case of clandestine removal with the connivance of the officers and therefore, penalty under Section 11AC would be automatically attracted even if the duty had been paid by the Appellant prior to the issue of SCN.

3. I have carefully considered the submissions from both the sides and perused the records. The bulk of the shortage of 1826 qtls. had been detected by the Appellant themselves as is evident from the letter dt.1.6.06 addressed to the Range Supdt. intimating that their team had conducted a physical stock taking of sugar on 30th and 31st May'06 in the

course of which shortage of 1826 qtls had been found and that they are prepared to pay the duty on this quantity, which they paid on the next day. In subsequent stock checking by the Central Excise Officers from 1.6.06 to 6.6.06, further shortage 87 qtls. was found which was pertaining to stock of 2002-03 season. The Appellant is a Govt. Undertaking and from the records, it is clear that the major portion of the shortage 1826 qtls. had been detected by the Appellant about which they promptly informed the Department and on the very next day, they also paid the duty on this quantity. In view of these circumstances, I am of the view that the Appellant cannot be accused of wilful contravention of the provisions of the Central Exise Rules with intention to evade the duty and the penalty under Section 11AC is not called for.

4. In view of these circumstances, the impugned order upholding penalty on the Appellant under Section 11AC is not sustainable. The same is set aside and the appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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