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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/1123/2007 – SM[BR]

Date 19/05/2009

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

To :
M/S DSM SUGAR ASMOLI,
VILLAGE ASMOLI TEHSIL SAMBHAL DISTT.
MORADABAD (U.P.) 244004

M/S DSM SUGAR ASMOLI, Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 373 / 2009 –SM[BR] dated 29.4.2009 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.RAJESH KUMAR
   24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.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/1123/07-SM

[Arising out of Order-in-Appeal No.09-CE/MRT-II/07 dt.23.1.07 passed by the Commissioner(Appeals), Meerut)

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 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. DSM Sugar Asmoli Appellant

Versus

CCE, Meerut Respondent

Appearance
Sh. Rajesh Kumar, Adv. For Appellant
Sh. S.K.Bhaskar, Authorised Departmental Representative, DR for Respondent

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

Date of decision: 29.4.09
Final Order No. 373/09-SM(BR)

Per Rakesh Kumar:

This is an appeal against order-in-appeal 09/CE/MRT-II/07 dt.23.1.07 passed by Commissioner(Appeals), Meerut upholding the confirmation of duty amounting to Rs.1,19,343/- alongwith interest and imposing penalty of Rs.10,000/- on them. The Appellant claimed remission of duty in respect of loss due to seepage of 405.05 qtls. of molasses in Dec'04 and 1290 qtls of molasses in May'05 which the percentage terms was 0.44% and 0.35% respectively. Their application for remission of duty in respect of this loss of molasses was rejected by the Commissioner vide memorandum No.19/Commr/MRT-II/2006 dt.31.3.06. The Appellant filed an appeal No.E/2204/06-SM(BR) before the Tribunal against this order. In the meantime, consequent upon the Commissioner's order dt.31.3.06 rejecting the Appellant's remission application, the Asstt. Commissioner passed an order-in-original dt.25.7.06 confirming the duty demand of Rs.1,19,343/- alongwith interest against the Appellant and imposing the penalty of Rs.10,000/- on them. The Appellant's appeal against this order of the Asstt. Commissioner was dismissed by the Commissioner(Appeals) by the order-in-appeal dt.23.1.07. The present appeal has been filed against the Commissioner(Appeals)'s order dt.23.1.07 upholding the duty demand and penalty.

2. Heard both sides. Shri Rajesh Kumar, Advocate, Ld. Counsel for the Appellant pleaded that the confirmation of duty demand against the

Appellant was based on rejection of the application for remission of duty by the Commissioner, but the Commissioner's order dt.31.3.06 rejecting the remission application, on appeal against the same, has been set aside by the Tribunal vide Final order No.612/2008-SM(BR) dt.25.2.08. In view of this, he pleaded that duty demand against the Appellant does not survive.

2.1 Ld. DR confirmed that the Commissioner's order rejecting the remission application has been set aside by the Tribunal.

3. Since the very basis of the duty demand no longer exists as Commissioner's order rejecting the remission of duty has been set aside by the Tribunal vide Final Order No.612/08-SM(BR) dt.25.2.08, the Commissioner(Appeals)'s order upholding the duty demand against the Appellant and imposing penalty on the Appellant is no longer 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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