

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/1837/2007 & 926 / 2008 -SM[BR]

Date 05/06/2009

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

To :
M/S SHAKUMBARI SUGAR & ALLIED IND. LTD.

TODARPUR SAHARANPUR

M/S SHAKUMBARI SUGAR & ALLIED IND. LTD.

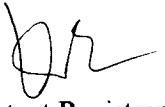
C.C.E. MEERUT I

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 544 - 545 / 2009 -SM[BR] dated 13.5.2009
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 I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.

2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.

FA-9, NEW KAVINAGAR

GHAZIABAD[U.P]

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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

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11 M/s. Deeparchie Publications. M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi 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 (Harvana)

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M/S SHAKUMBARI SUGAR & ALLIED INDUSTRIES LTD.

VILLAGE-TODRAPUR DISTT-SAHARANPUR


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – III

EXCISE APPEAL NO. 1837 OF 2007 & 926 OF 2008-SM

[Arising out of Order-in-Appeal No. 77-CE/MRT-I/2007 dated 19.4.2007
passed by the Commissioner (Appeals), Central Excise, Meerut-I]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

Appeal No. E/1837/07-SM(BR)

M/s. Shakumbari Sugar & Allied Inds. Ltd.

Appellants

Vs.

CCE, Meerut-I

Respondent

Appeal No. E/926/08-SM(BR)

CCE, Meerut-I

Appellant

Vs.

M/s. Shakumbari Sugar & Allied Inds. Ltd.

Respondent

Appearance:

Shri Rajesh Chhibber, Advocate for the assessee;
Shri S.K. Bhaskar, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 13th May, 2009

FINAL ORDER NO. 544-545/09-sm (BR) **dated** 13.5.09

Per P.K. Das:

Relevant facts of the case, in brief, are that the assesseees are engaged in manufacture of Sugar, Molasses and Ethyl Alcohol classifiable under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. During the year 2004-05 the assessee availed 50% of credit on capital goods namely, Molasses mixture/Diluter Safety System (heading 73.26) and Aluminium Coils (Sub-heading 7606.20). The original authority denied the credit on the said capital goods which was upheld by the Commissioner (Appeals). Hence, the assessee filed appeal No. E/1837/07.

2. The assessee again availed balance 50% credit on capital goods on the said items in the year 2005-06. The original authority again denied the credit on the said item. But, the Commissioner (Appeals) set aside the adjudication order and allowed credit. Hence, the Revenue filed appeal No. E/926/08.

3. After hearing both sides and on perusal of the records, it is seen that in the earlier Order-in-appeal dated 19.4.07, the Commissioner

(Appeals) observed that Molasses mixture/Diluter Safety System is a part of system of mixing of molasses. This item is not specified as capital goods or accessories under Rule 2(b) of Cenvat Credit Rules, 2002. The other item Aluminium Coils, it is observed that the assessee could not produce tangible evidence of use of the item and the credit was denied.

4. In the subsequent Order-in-appeal dated 25.2.2008 the Commissioner (Appeals) examined the use of these items in detail. Learned Advocate submits that Molasses mixture/Diluter Safety System is part of Distillery machine. Use of the items as recorded in the impugned order is reproduced below:-

“The said Molasses Mixture/Molasses Diluting Safety System comprised of the following items, namely: Molasses Receiving Tank used in fermentation house for collecting Molasses from storage tank, Nutrient Mixing Tank used for mixing nutrients DAP & Urea, Manometer Bottle used for measure and show pressure in distillation bottle, Vapor Mixing Bottle used for collecting alcoholic vapour from reflux column, Sight Safety Glass to see inside the column, the Frame for Air Filter used for filtering the atmospheric air used in culture vessel for propagation of bacteria, Molasses Broth Mixer used for mixing water and molasses at required specific gravity ready for fermentation process, Molasses Diluter for admixing molasses and water for re-circulation, Safety System used for securing safe operation etc. These items are being used as parts and accessories of the Machine/ Machinery of

Chapter 84 and fall under the category of capital goods under Rule 2(a)(A)(iii) of the Cenvat Credit Rules, 2004.”

5. Learned Advocate submits that Aluminium Coil is part of cooling system. Use of the item as recorded in the impugned order is reproduced below:-

“As regards Aluminium Coils, it was contended that the same has been cut and wrapped on the outside wall of the distillation column to save energy loss, maintain optimum temperature of 32-33 degree Celsius which is conducive for alcohol process and work for insulation. It is therefore used for proper functioning of distillation process and becomes a part of the capital goods.”

6. It is revealed from the subsequent order-in-appeal dated 25.2.2008 that the Commissioner (Appeals) after examining the use of the items allowed the credit and observed as under:-

“I also find that the other conditions that the goods in question must be used for production or processing of the final products and must be use within the factory of production is not disputed by the department. The items are used within the factory of production in their distiller part. The process of distillation of Alcohols/ENA/Denatured ENA/Alcohol commences with the admixture of water and molasses. All the goods detailed as components are used for processing in distillery and the uses like storage, dilution, fermentation, insulation, temperature & pressure maintenance, visual inspection, media, security system etc are all parts of the process adopted in the distillery. In the letter dated 08.01.2008 of the jurisdictional Asst. Commissioner in response to this office letter dated 27.12.2007 with copy of the Appeal as well as during the personal

hearing attended on 10.01.2008, the fact of usage and place of usage has not been disputed or rebutted by the department. Hence I hold that the other conditions of the Rule namely purpose of use and the place of use are also complied with. In view of the discussions above, the substantive right of the Cenvat Credit of the Appellants cannot be denied."

7. Learned D.R. submits that the Commissioner (Appeals) in earlier order denied the credit on the said item and, therefore, the subsequent order-in-appeal is liable to be set aside. I am unable to accept the submission of the learned D.R. In earlier Order dated 19.4.2007 Commissioner (Appeals) observed that Molasses mixture/Dilute Safety System is a part of system of mixing of Molasses. It is seen that system of mixing of molasses is part of sugar manufacturing system. It is further observed that Aluminium Coil is used for obtaining optimum temperature in cooling system. I find that in the same Order-in-Appeal, Commissioner (Appeals) allowed credit on "Vessels for Cooling" used to obtain optimum temperature in cooling system. In my view, when Commissioner (Appeals) allowed credit on vessel for cooling, then, there is no reason to deny on Aluminium Coil. Hence, Order dated 19.4.2007 in so far as denial of credit on Molasses mixture/Dilute Safety System and Aluminium Coil are not justified.

8. In any event, it appears from subsequent Order dated 25.2.2008 that these items were used as part of sugar manufacturing system and credit are eligible under Rule 2(b) of the said Rules. The assessee strongly relied upon subsequent Order passed by Mrs. Vanaja N. Sarna,

Commissioner (Appeals). It must be appreciated the openness of mind of Commissioner (appeals), that she considered the matter afresh and after examining the use of these items, as placed by the assessee held that Cenvat Credits are admissible on these items. Hence, I do not find any reason to interfere Order-in-appeal dated 25.2.2008.

9. In view of the above discussion, the appeal filed by the assessee is allowed. Appeal filed by the Revenue is rejected. Cross objection is also disposed of.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK