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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/121 /2009 – SM[BR] Date **07/02/2011**

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

To :
C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S OUDH SUGAR MILLS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 106 / 2011 - SM[BR]** dated 28.1.2011 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 OUDH SUGAR MILLS LTD.
HARGAON, DISTT. SITAPUR (UP)

2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.
FA-2, KAVE NAGAR GHAZIABAD[U.P]

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.E/121/2009-SM with
E/CO/56/2009

Date of Hearing/Decision: 28.01.2011

(Arising out of Order-in-Appeal No.113-CE/LKO/2008 dt.24.10.2008 passed by the CCE (A), Lucknow)

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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?	Yes
2	Whether it should 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Lucknow — Appellant

Vs.

M/s.Oudh Sugar Mills Ltd. — Respondent

Present for the Appellant: Shri Anil Khanna, SDR
Present for the Respondent:Shri Rajesh Chhibber, Advocate

Coram:
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORDER No.** 106/2011/SM (BR)

PER: M.VEERAIYAN

The appeal No.E/121/09 is by the department against the order of the Commissioner (Appeals) No.113-CE/LKO/2008 dt.24.10.2008. The cross objection No.E/CO/56/09 is connected to this appeal.

2. On 21.09.2006, the officers visited the premises of the respondents and conducted the stock verification of the molasses stored in the tank and found excess of 3,317.01 qtls. and seized the same but entrusted to the respondents for safe custody. The original authority vide order dated 8.5.2008 confiscated the excess stock of molasses valued at Rs.5,97,062/- and allowed the goods to be the redeemed on payment of fine of Rs.2,50,000/- and also imposed penalty of Rs.2,53,752/- under Rule 25 of Central Excise Rules, 2002. The Commissioner (Appeals) has set aside the order of the original authority after taking note of the fact that the excess goods were subsequently cleared by the respondents on payment of the duty even though the goods were held liable for confiscation by the time the order was issued, the goods were not available for confiscation as the respondents have cleared the same on payment of duty.

3. Learned SDR submits that the excess goods found stands admitted and the same have been cleared by the respondents without seeking provisional release of the goods and therefore the goods are liable for confiscation and redemption fine was correctly imposed by the original authority. The order of the Commissioner (Appeals), after holding that the goods are liable for confiscation, ~~and~~ setting aside the redemption fine and penalty was not justified as there was excess stock found and subsequently cleared by them without any permission.

4. Learned Advocate for the respondents submits that the molasses are of volatile in nature and are liable to losses during storage and handling. The measurement recorded by dip reading method is only approximate. They have taken the excess stock

found at the time of dip reading into account and paid duty as and when the goods are cleared. In fact, in October, 2006, they found excess stock of 6096.30 qtls. and the same were duly taken into account and duty liability discharged and this shows the bonafide on the part of the assessee. He submits that in cases shortages found during dip reading they claimed remission of duty. He seeks that the order of the Commissioner (Appeals) in setting aside the redemption fine and penalty should be upheld. The order of the Commissioner (Appeals) in holding that the goods were liable for confiscation is not legal even though he has set aside redemption fine imposed.

5. I have carefully considered the submissions from both sides and perused the records. The officers have conducted the stock verification on 21.09.06 and excess stock was found and the same was seized and entrusted to the respondents. The seized goods, apparently, were stored in the same storage tank. The respondents were not disputing that there was excess stock found on 21.09.06. In fact, they found further excess stock during October, 2006 and cleared ~~annd~~ the same on payment of duty including excess stock of goods found in September, 2006. In the present case, the goods found in excess were seized and entrusted to the respondents and the physical possession was not taken by the department for administrative reasons. The assessee- respondent was under obligation to seek provisional release of the goods before clearing the seized goods entrusted to their custody. This is a case where the sized goods were handed over to the assessee –respondent who has failed in the producing the goods which they are required to produce at the time of adjudication and therefore reasoning adopted by the Commissioner (Appeals) ~~is~~ in not sustaining the redemption fine on the ground that the seized goods have been already cleared on payment

of duty cannot be appreciated. The decision relied upon by the learned Advocate in the case of Triveni Engineering & Industries Ltd. vs. CCE, Meerut reported in 2007 (207) ELT 686 and the decision of the Hon'ble High Court of Punjab and Haryana in the case of CCE, Chandigarh vs. Sadashiv Ispat Ltd. reported in 2010 (255) ELT 349 (P&H) are not applicable to the facts of the present case.

6. The respondents have failed to maintain proper account and further they disposed of the seized goods without permission. Therefore, the order of the original authority holding that the goods are liable for confiscation has to be upheld. Some penalty was also warranted. Therefore the order of the Commissioner (Appeals) deserves to be set aside and the order of the original authority needs to be restored.

7. However, in the peculiar facts and circumstances of the case, while restoring the order of the original authority, redemption fine imposed is reduced from Rs.2,50,000/- to Rs.50,000/- and the penalty imposed is reduced from Rs.2,53,752/- to Rs.50,000/-.

8. The appeal is disposed of as above. The cross objection is also disposed of.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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