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/2203/2007 – SM[BR]** Date **22/06/2011**

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

To :
NANDGANJ SIHORI SUGAR CO. LTD.
DARIYAPUR, P.O. MUNSHIGANJ, RAEBARELI, U.P.
229405

NANDGANJ SIHORI SUGAR CO. LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 328 / 2011 –SM[BR]** dated 14.6.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
COURT NO. III

Excise Appeal No. 2203 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 37-CE/LKO/2007 dated 28.5.07 passed by the Commissioner of Customs & Central Excise (Appeals), 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

---

M/s. Nangganj Sihori Sugar Co. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Lucknow — Respondent

Appearance:

Ms. Sukriti Das, Advocate for the Appellants
Shri Anil Khanna, DR for the Respondent

Final

Date of Hearing/decision : 14.6.2011

ORAL ORDER NO. 328/2011 SM(BR)

Per M. Veeraiyan:

1. Heard both sides.

2. When the officers visited on 15.1.05 and conducted stock verification, they noticed that the stock as per books of account was 16,771.10 quintals and physical stock available was 20,271.51 quintals. The officers allowed a margin of 10% for foam formation and held that 1,415.66 quintals of molasses was in excess. The authorised signatory accepted the excess stock. The value of excess stock was ascertained to be Rs.4,88,402/-. The original authority confiscated the excess stock and allowed the redemption fine of Rs.15,000/- and also imposed penalty of Rs.10,000/- under Rule 25 of the Central Excise Rules. The Commissioner (Appeals) upheld the order of the original authority.

3. Learned advocate submits that the weight ascertained by the officers was following the dip reading method and therefore, it is not reliable and that there was, in fact, no excess stock. Further, the finding that the excess stock found was kept for clandestine removal is without any evidence. She seeks setting aside the confiscation and penalty.

4. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals).

5. I have carefully considered the submissions from both sides and perused the records. The weight recorded by the appellants is also apparently following the dip reading method. Therefore assailing the weight on the ground that the same was ascertained based on dip reading method is not justified. It is also noticed that the authorised signatory

in his statement recorded under Section 14 clearly admitted the excess found goods on the date of visit by the officer. The statement is not retracted. Under these circumstances, irregular maintenance of stock accounts is clearly established and provisions of Rule 25 (1)(b) of Central Excise Rules are attracted. Therefore, the excess found goods are liable for confiscation and penalties also imposable. I find that the quantum of redemption fine and penalties imposed are reasonable and are not excessive considering the value of goods found in excess is Rs.4,48,402/-.

6. In view of the above, I do not find any merit in appeal. Appeal is dismissed.

(M. Veeraiyan)
Member(Technical)

ss