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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/2726 , 2727 , 2728 / 2009 –SM[BR]** Date **21/07/2011**

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant
Vs
Respondent
M/S KESAR ENTERPRISES LTD.

I am directed to transmit herewith a certified copy of **Final order No. 406-408 /2011-SM[BR]** dated 13.7.2011 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 KESAR ENTERPRISES LTD.
BAHERI, DISTT. BAREILLY.
[2] M/S SUPERIOR INDUSTRIES LTD.
[3] M/S SUPERIOR INDUSTRIES LTD.
C.B. GANJ, BAREILLY.

2. Adv. / Consult SHRI KAPIL VAISH CA.
B-51 BUTLER PLAZA CIVIL
LINES, BAREILLY.

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 (Harvana)
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,
West Block No.2, R.K.Puram, New Delli,

Court No.IV

Date of hearing & decision : 13. 07. 2011

Ex. Appeal Nos.2726, 2727 & 2728/09-SM

(Arising out of O/A Nos.197-CE/MRT-II/2009 & 200-201-CE/MRT-II/2009 dt. 30.6.09 passed by Commr.of Central Excise (Appeals), Meerut II)

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

CCE, Meerut II

...APPELLANT(S)

VERSUS

M/s Kesar Enterprises Ltd.
M/s Superior Industries Ltd.

RESPONDENT (S)

APPEARANCE

Rep. by Shri A. K. Khanna, DR for the Appellant-Revenue
Rep. by Shri Kapil Vaish, CA for the Respondents

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Final Oral Order No. 406 - 408/2011 SM (BR)

Per Shri Ashok Jindal :

These appeals are filed by the Revenue against the impugned order wherein a show-cause notice has been set aside by the Commissioner (Appeals).

2. The facts of the case are that the respondents are engaged in the manufacture of rectified spirit and denatured spirit and liquor. During the course of manufacturing of spirit and liquor, the effluent so emerged is cultured with chemicals and then cultured effluent is mixed with press mud by a mechanical process resulting in a new product called as "Bio Fertilizer" which was sold as Javik Khad, which is classifiable under Chapter 3101 of CETA, 1985 attracting nil rate of duty. The respondents are availing credit of inputs i.e molasses in the manufacture of final product i.e. rectified spirit/denatured spirit which are dutiable. As during the course of manufacture of this final product, "Bio Fertilizer" emerges which attracts nil rate of duty. during the course of manufacturing of the final product i.e. rectified spirit/denatured spirit, the cultured effluent is mixed with press mud resulting into emergence of a new product, namely, Bio-compost.. The Department is of the view that the respondents are liable to pay the value of 8%/10% of the exempted product emerged during the course of manufacturing in their final product i.e. Bio-compost. Therefore, a show-cause notices were issued to the respondents which were adjudicated. The demands were confirmed against the respondents along with interest and equal amount of penalties. On appeal, the Commissioner (Appeals) set aside the adjudication order

relying on the decisions of the Tribunal in the case of Commissioner of Central Excise, Tirunelveli Vs. Dharani Sugars & Chemicals Ltd. reported in 2008 (232) ELT 633 (Tri.-Chennai), Navabharat Ventures Ltd. Vs. Commissioner of Central Excise, Visakhapatnam reported in 2009 (235) ELT 873 (Tri.-Bang.) and E.I.D. Parry (India) Ltd. Vs. Commissioner of Central Excise, Trichy reported in 2004 (176) ELT 734 (Tri.-Chennai). Aggrieved from the said order, the Revenue is in appeal.

3. Shri A. K. Khanna, ld. DR appearing on behalf of the Revenue submitted that the Commissioner (Appeals) while setting aside the adjudication order has relied upon on the decisions of the Tribunal cited herein above which have been challenged by the Revenue before the Hon'ble High Court. Therefore, these decisions have not been finalized, hence, the impugned order is to be set aside.

4. On the other hand, Shri Kapil Vaish, ld. CA appearing on behalf of the respondents, submitted that as the Three Division Bench has taken a view that the product by culturing emerged during course of manufacturing of the final product, does not attract any marketability. There is no requirement to reverse 8%/10% of the value of this bio-compost. As the issue has attained finality by the decisions of the Tribunal and the decision passed by the Tribunal has not been stayed by the Hon'ble High Court, therefore, the Revenue's appeals deserve dismissal. The ld. C.A. further submitted that in Ex.Appeal No.E-2728/2009, a demand has been made by invoking extended period of

limitation. In the instant case, the extended period of limitation is not applicable.

5. Heard and considered. As the issue has been decided by this Tribunal in the decisions cited herein above and the same has not been stayed by the Hon'ble High Court, therefore, I do not want to interfere with the impugned order and the same is upheld. In Ex.Appeal No.E-2728/09, the respondent has taken a ground of extended period of limitation. I do not want to go in those aspects as the issue has been settled in favour of the respondents on merit. Therefore, the impugned orders are upheld and the appeals filed by the Revenue are dismissed.

(Dictated and pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

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