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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/3071 - 3072/2005 – SM [BR]** Date **07/09/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. **KICHHA SUGAR CO.LTD.**
2. **KICHHA SUGAR CO.LTD.**
KICHHA DISTT U.S.NAGAR
263148

KICHHA SUGAR CO.LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.577 -578 /2011 –SM[BR]** dated 1.9.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal Nos.3071-3072/2005-SM

(Arising out of order in appeal No.143-146/CE/MRT.II/05 dated 13.7.05 passed by the Commissioner of Central Excise (Appeals), Meerut-II)

Date of Hearing: 22.6.2011
Date of Pronouncement: 01-09-11

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

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 would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	NO
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Kichha Sugar Co Ltd — Appellants

Vs

CCE, Meerut-II — Respondent

Appeared for the Appellant: Shri Mayank Garg, Advocate
Appeared for the Respondent: Shri S.K. Bhaskar, SDR

Coram: **Hon'ble Mr. Mathew John, Member (Technical)**

Final ORDER - 577- 578/2011 SM (Br)

Per Mathew John:

The Appellant is a manufacturer of V.P. Sugar. Since the Appellant did not have adequate storage space within the factory, it sought permission from Commissioner of Central Excise to store non-duty paid sugar outside their factory premises as per Board's circular No. 610/1/2002 Cx dated 01-01-2002. This circular reads as under:

> "Subject : Storage of non-duty paid goods outside the factory premises-regarding.
>
> I am directed to refer to the Central Excise Manual, which has been issued by the Board on 31-8-2001 and Board's circular No. 586/23/2001-CX, dated the 12th September 2001 [2001 (133) E.L.T. T5] wherein the facility of storage of non-duty paid goods outside factory premise was extended to sugar only.
>
> 2. Representations have been received from the field formations as well as from the trade associations in this regard stating that the facility which was available under erstwhile Rule 47(5) of the Central Excise Rules, 1944 was not extended under Central Excise (No. 2) Rules, 2001 and this is causing a lot of hardship to the trade.
>
> 3. The matter has been examined by the Board. It is the view that in exceptional circumstances such as envisaged under erstwhile Rule 47(5) of Central Excise Rules, 1944 the facility of non-duty paid goods outside the factory premise, without payment of duty, may be made available to ensure no hardship is caused to the trade. However, this is subject to adequate revenue safeguards."

2. The Commissioner in charge of the Appellant's factory imposed a condition that there should be physical supervision of the godown by departmental officers and the Appellant should pay charges for posting departmental officers to supervise such

godown. The Appellant remitted Rs. 3,86,762/- towards such charges.

3. The question whether such charges were to be levied was examined by the Central Board of Excise and Customs and CBEC issued circular 709/25/2003-CX 23-04-03 in this regard. The Circular read as under:

> *"Subject: Central Excise - Storage of goods outside factory premises - Waiver of Merchant overtime charges - Regarding.*
>
> I am directed to refer to Board's Circular No. 610/1/2002-CX., dated 1-1-2002 [2002 (139) E.L.T. T27] wherein the facility of storage of non-duty paid goods outside the factory premises which was available under erstwhile Rule 47(5) of Central Excise Rules, 1944 has also been granted under Central Excise (No. 2) Rules, 2001 subject to adequate Revenue safeguards.
>
> 2. It has been observed by the Board that even though the aforesaid circular does not envisage any physical supervision of such storage premises/godown by the Central Excise, the field formations are still collecting merchant overtime charges/charges on cost recovery basis as per earlier concept of physical supervision of godowns/storage places in terms of Board's Circular No. 261/33A/86-CX. 8, dated 14-4-1986.
>
> 3. The matter has been examined. It is the view of the Board that in current era of liberalisation and simplification of law and procedures the emphasis is on self-assessment by the assessee. Therefore, the recovery of merchant overtime charges in such cases are no longer warranted. The Jurisdictional Commissioner shall, however, impose any other condition which he deems fit for the safeguard of revenue before granting permission for storage of non-duty paid excisable goods outside factory premises of the assessee.
>
> 4. The Circular No. 610/1/2002-CX., dated 1-1-2002 and earlier instructions on this subject stand modified to the above extent."

4. On receipt of Circular dated 23-04-03 the Appellant filed two refund applications for supervision charges already paid one for Rs, 1,10,348/-for the period April to July 2003 and another for Rs. 3,86,762/- for the period Feb 2002 to March 2003

5. The Assistant Commissioner rejected the refund claim on the ground that the refund claim was filed under section 11 B of the Central Excise Act and this section is applicable for refund of Central Excise duty only and not to payments of the impugned type. He also observed that the claim is time barred. He rejected the refund claim.

6. Aggrieved by the order the Appellant filed an appeal with Commissioner (Appeal) who affirmed the finding of the adjudicating officer. Aggrieved by the order of Commissioner (Appeal), the Appellant has filed this appeal.

7. I find that similar matter has been considered by the Tribunal in Metal Recycling Industry Vs. CCE -2008 (229) E.L.T. 630 (Tri. - Ahmd.) wherein it was held that such matter is an administrative matter and cannot be subject matter of Appeal before the Tribunal.

8. So the two Appeals are rejected.

(Pronounced on 1/9/11)

(Mathew John)
Member(Technical)