

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/2238/2011 – SM[BR] E / STAY /2928 /2011-SM[BR]

Date 02/01/2012

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

To :
M/S TRIVENI ENGG. & IND. LTD.
RAMKOLA,
DISTT. KUSHINAGAR (U.P.)
M/S TRIVENI ENGG. & IND. LTD.

Appellant

Vs
Respondent

dated 20.12.2011

I am directed to transmit herewith a certified copy of Final order No. 950/2011-SM[BR]&S/895/2011
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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult

MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications 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,
WEST BLOCK NO.II, R.K. PURAM,
NEW DELHI-110066**

COURT NO. II

**E/Stay/2928 of 2011 in &
Central Excise appeal No. 2238/2011-SM**

[Arising out of Order-in-Appeal No. 79/RPR-I/2008 dated 18.7.2008 passed by the Commissioner (Appeals-I), Central Excise, Raipur].

Date of Hearing/decision: 20th December, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Triveni Engg. & Inds. Ltd.,

Appellant

Vs.

CCE, Allahabad

Respondent

Present for the Appellant : Shri Rajesh Chhibber, Adv.
Present for the Respondent : Shri R.K. Verma, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 950/2011 SM (BR) &
S - 895/2011 SM (BR)

Per D.N. Panda:

Learned Counsel says that without examination of storage loss of molasses the authority below simply rejected

the remission application for which demand arose. Pleadings made before the adjudicating authority appears in the adjudication order itself. When the state excise authority agreed that ^{there was} storage loss, in absence of any mala fide in their agreement, the central excise authority should not merely suspect the process loss occurred on any other ground. Therefore, the appellant may be allowed the relief claim^{ed} in appeal.

2. Learned D.R. categorically says that when the appellant failed to give evidence it could not succeed before first appellate authority.

3. Heard both sides and perused the record.

4. The grievance is on the aforesaid narrow compass and duty element involved is Rs. 39,387/- followed by equal amount of penalty. Dispensing with requirement of pre-deposit, in the fitness of circumstances appeal is remanded to consider pleading of the appellant as is recorded in the adjudicating order since the appellate authority did not consider at all the acceptance of loss by state excise authority. Accordingly, granting fair opportunity of hearing to the appellant, learned Commissioner (Appeals) shall hear the matter afresh and pass proper order. In the result, both stay application and appeal are disposed remanding the appeal to the Commissioner (Appeals).

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK