

**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/235 /2008 – SM[BR] & E / CO / 200 / 2008 –SM[BR]

Date 13/05/2010

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  
Respondent

M/S KISAN SAHKARI CHINI MILLS LTD.

I am directed to transmit herewith a certified copy of **Final order No. 520 / 2010 –SM[BR]** dated 20.4.2010  
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 KISAN SAHKARI CHINI MILLS LTD.

VILL. BASAURI , P.O-KNI SULTANPUR, DISTT. SULTANPUR. (U.P.)

2. Adv. / Consult

NONE;-----

3 S.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

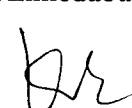
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)

13 Office Copy

14 Guard file

15 TAXINDIAONLINE. COM PVT. LTD. UNIT NO . 1, 2<sup>ND</sup> FLOOR, VASANT ARCAD,  
NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

  
Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block No.2, R.K.Puram, New Delhi-110066.**  
**Principal Bench, New Delhi.**

**E/235/08-SM & E/CO/200/08-SM**

[Arising out of Order-in-Appeal No.127-CE/LKO/07 dt.30.10.07  
 passed by Commissioner(Appeals), Lucknow)

For approval and signature

Hon'ble Mr. Rakesh Kumar, 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?

2. Whether it would  
 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 :  
 Department Authorities:

CCE, Lucknow

Versus

Appellant

M/s. Kisan Sahkari Chini Mills Ltd.

Respondent

Appearance

Sh. I. Baig, DR For Appellant  
 None for Respondent

*final*

Date of decision: 20.4.2010

Order No.

520/2010 SM(Br)

Per Rakesh Kumar

The facts leading to this appeal, in brief, are as  
 under:

1.1 The Respondent vide their letter dt.6.12.04 informed the jurisdictional Central Excise Officers that on verification of stock of sugar by U.P.State Sugar Co-operative Federation, Lucknow, shortage of 585 quintals of sugar was detected. The Section ~~Off~~ Officer visited the unit immediately and found that there was shortage of 585 quintals of sugar involving duty of Rs.50,719/-. The Respondent deposited the duty amount of Rs.49,725/- vide debit entry in PLA on 2.12.04 but Education Cess of Rs.944/- was not paid. A show cause notice was issued for confirming the demand of duty on the sugar found short alongwith interest and also for imposition of penalty on the Respondent under Section 11AC as the Department's allegation was that the sugar found short had been clandestine cleared. The Dy. Commissioner vide order-in-original dt.13.9.06 confirmed the duty demand of Rs.50,719/- and also demanded of interest on it at the applicable rate. Besides this, the Dy. Commissioner imposed penalty on the Respondent under Section 11AC. But instead of imposing penalty equal to the duty demand confirmed, he imposed reduced penalty ~~to~~ <sup>to</sup> 25% of the duty, under first proviso to Section 11AC. Besides this, he also imposed a penalty of Rs.5,000/- under Rule 25 of Central Excise Rules,2002. Both the Respondent as well as the Department filed the appeals against the Commissioner(Appeals)'s order. However, the Commissioner(Appeals) decided vide order-in-

appeal No.19-CE/LKO/2007 dt.22.2.07 dismissed the Respondent's appeal and confirmed the Dy. Commissioner's order. The Department's appeal for enhancement of penalty came up before the Commissioner(Appeals) for hearing subsequently. The Commissioner(Appeals) vide order-in-appeal No.127-CE/LKO/2007 dt.30.10.07 dismissed the Department's appeal on the ground that since against the same order, the Respondent's appeal has been dismissed and the Dy. Commissioner's order had been upheld vide order-in-appeal dt.22.2.07, the Dy. Commissioner's order stands merged with the appellate order and hence the Revenue's appeal is not maintainable. The Commissioner(Appeals) in this regard relied upon the judgment of the Larger Bench of the Tribunal in the case of CCE, New Delhi vs LML Ltd. reported in 2002(1430 ELT.431 and the also Hon'ble Supreme Court's judgment in the case of CCE vs Bhagwati Ispat Ltd. reported in 2003(157)ELT. A313(SC). It is against this order of the Commissioner(Appeals) that the Revenue has come in appeal and the Respondent have filed cross objection.

2 None appeared for the Respondent. Heard the learned DR

2.1 Shri I.Baig, learned DR, reiterating the ground of appeal in the appeal filed by the Revenue pleaded that the issue in the Revenue's appeal is different from the issue in

this appeal of the Respondent; that while the Respondent had challenged the duty demand and penalty, the Department had challenged the order of the adjudicating authority for not imposing penalty equal to the duty demand under Section 11AC, that when the Respondent had not satisfied the conditions for reduced penalty under first proviso to Section 11AC, the reduced penalty could not have been imposed; that the Dy. Commissioner in accordance with the provisions of first proviso to Section 11AC should have given an option to the Respondent to pay reduced penalty by paying the entire duty, interest and 25% penalty within the period stipulated under the first proviso, ~~and~~ that Dy. Commissioner could not straightway impose reduced penalty and that therefore, the Dy. Commissioner's order with regard to penalty under Section 11AC is incorrect and the Commissioner(Appeals) has wrongly dismissed the Department's appeal by applying the doctrine of merger which is not applicable to this case.

3. I have carefully considered the submissions from both the sides and perused the records. Against the same order of the Dy. Commissioner, both the Respondent as well as the Department had filed appeals and the Respondent's appeal was decided first by the Commissioner(appeals) vide order-in-appeal dt.22.2.07 by which the same was dismissed and the Dy. Commissioner's order was upheld. Once the

Respondent's appeal was decided and the Dy. Commissioner's order was upheld, Dy. Commissioner's order stands merged with the Commissioner(Appeals)'s order. Same view has been taken by the Larger Bench of the Tribunal in the case of CCE vs LML Ltd.(supra) and also by the Hon'ble Supreme Court in the case of CCE vs Bhagwati Ispat Ltd.(supra). In view of this, I am of the view that the Revenue's appeal was rightly dismissed by Commissioner(Appeals) is not maintainable. I do not find any infirmity in the impugned order. The Revenue's appeal is, therefore, dismissed.

Order dictated in the open Court.

(Rakesh Kumar)  
Member(Technical)

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