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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/1095/2009 – SM[BR]   Date 09/12/2010

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

To :
M/S KISAN SAHKARI CHINI MILLS LTD.
THE GENERAL MANAGER, SEMIKHERA,
DISTT. BAREILLY, (U.P.)
M/S KISAN SAHKARI CHINI MILLS LTD.   Appellant

Vs

C.C.E. MEERUT II   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1379 / 2010-SM[BR] dated 24.11.2010 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.KAPIL VAISH
   B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.
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 Publictions 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 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.1095 of 2009-SM

(Arising out of Order-in-Appeal No.130-CE/MRT-II/2008 dated 29.10.2008 passed by the CCE(A), Meerut-II)

Date of Hearing/Decision: 24.11.2010

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?	
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.Kisan Sahakri Chini Mills Ltd. Appellant

Vs.

CCE & C, Meerut-II Respondent

Present for the Appellant : Shri Kapil Vaish, CA
Present for the Respondent: Shri K.P.Singh, SDR

Coram:
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORDER No.** 1379/2010 SM(BR)

PER: M.VEERAIYAN

This is an appeal against order of the Commissioner (Appeals) No.130-CE/MRT-II/2008 dated 29.10.08 upholding the rejection of refund claim of Rs.57,205/- claimed by the party.

2. Heard both sides.

3. The relevant facts of the case, in brief, are that during sugar season 2003-04, there was excess production and excess stock and the appellants removed substantial quantity (77100 qtls.) on

payment of duty and stored them in their godown outside the factory premises. They were clearing the said duty paid stock on sale from the said godown under challan without payment of duty (as duty has aleady been paid) from the said godown and without ~~proper~~ for central excise invoice. In December, 2004, after intimating the department, they brought back to the factory a quantify of 5416 qtls., which was the balance quantity lying in storage. Out of the quantity so received, they removed 4743 qtls during the period from August, 06 to October, 06, without payment of duty under delivery challan and without issuance of excise invoice and the balance quantity of 673 qtls. was removed in the same fashion during November, 06. However, by mistake, they included 673 qtls. alongwith quantities cleared from fresh stock and paid duty for the month of November, 06. Therefore, it was claimed that the payment of duty for the quantity of 673 qtls. was a double payment as duty was already duty in March, 04 on the said quantity. They claimed the refund in October, 07 of excess duty paid which stands rejected by the original authority on the ground that they have not followed the procedure prescribed under Rule 16 of Central Excise Rules, 2002. The order of the original authority stands upheld by the Commissioner (Appeals).

4. Chartered Accountant appearing for the appellants submitted that there is no dispute that they brought back the goods to the factory under intimation under Rule 16; that a quantity of 5416 qtls. of sugar was cleared during the period from August,06 to November, 06 under Rule 16,; that they were entitled to take credit and utilize the same; that they have not taken any credit of duty originally paid in March, 04. Since they have not taken any credit, ~~after~~ in clearing the goods without reversing the credit after the reprocessing of sugar, there was no violation of Rule 16. He also submits that there is no

demand relating to the sugar cleared during the period from August, 06 to October,06 out of returned duty paid sugar. Therefore, the excess paid duty, by mistake, by including the quantity of duty paid sugar with the clearances of fresh sugar in the month of November, 06 requires to be refunded.

5. Learned SDR reiterated the findings and reasoning of the Commissioner (Appeals). He submits that Rule 16 does not permit clearances of goods without payment of duty and without reversal of credit taken.

6. I have carefully considered the submissions from both sides. The facts as claimed by the chartered accountant are not disputed as they are fairly recorded in the impugned order of the Commissioner (Appeals) itself. Total quantity of 5416 qtls. of sugar have been brought back by the appellants in December, 04 and a quantity of 4743 qtls. have been cleared from August, 06 to October, 06 without paying duty for second time. Apparently, there is no demand of duty relating to this clearance. ~~It is~~ The submission on behalf of the appellants that it was, by mistake, that 673 qtls. of sugar have been included to the quantity of non duty paid clearance and duty was paid in respect of this quantity during November,2006 deserves to be accepted. It is to be noted that the appellants have not paid duty in respect of clearances of quantity of 4743 qtls during August, 06 to October, 06. Therefore clearances of 673 qtls. in November,2006 deserves to be treated on the same footing.

7. Under these circumstances, the payment of duty on 673 qtls of sugar, ~~of~~ out of duty paid goods received back and cleared in November, 06 is a payment for the second time and deserves to be refunded if otherwise found in order. As no credit was taken in

respect of quantity of 673 qtls of sugar (as is also in the case of 4743 qtls of sugar), the question of reversal of credit under Rule 16(2) does not arise Therefore, the order of the Commissioner(Appeals) is set aside and the appeal is allowed with consequential relief as per law.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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