

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/567 /2008 – SM[BR]

Date 12/01/2010

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
C.C.E ALLAHABAD

Appellant
Vs
Respondent

M/S K.M.SUGAR MILLS LTD.

I am directed to transmit herewith a certified copy of Final order No. 57 / 2010 –SM[BR] dated 6.1.2010
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 K.M.SUGAR MILLS LTD.

FAIZABAD, (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 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

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

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

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

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

16 Office Copy

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 6.1.2010

Central Excise Appeal No.567 of 2008-SM

Arising out of the order in appeal No.196-CE/ALLD/2007 dated 10.12.2007 passed by the Commissioner (Appeals), Central Excise, Allahabad.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.E., Allahabad

...

Appellant

Vs.

M/s K.M. Sugar Mills Ltd.

....

Respondents

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue and none for the respondents

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

Oral Order No. 57 / 2010 SM (BY)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No.196-CE/ALLD/2007 dated 10.12.2007.

2. None appears for the respondents in spite of notice. Heard the learned DR for the Department.

3.1 The relevant facts, in brief, are that the respondent is a manufacturer of speed de-natured spirit and ordinary spirit falling under Chapter 22 of CETA, 1985. They also manufacture rectified spirit which is not subject to central excise duty. It appears that certain common inputs have been used in the manufacture of dutiable products and rectified spirit. The respondents

apparently have paid 8% on the price of the rectified spirit in terms of Rule 6(3)(b) of Cenvat Credit Rules treating the same as exempted goods. The valuation of the product is in dispute for the purpose of payment of 8% of the amount in terms of the said rule 6(3)(b). Show cause notice dated 23.9.05 was issued alleging that as per the contract of the buyers, the transportation cost involved was Rs.15,41,000/- whereas the respondents have actually paid to the transporters only Rs.12,25,600/-. As a result, the assessee has recovered Rs.3,15,400/- in excess from the buyers towards transportation cost which should be treated as part of the price of the "exempted product" namely, the rectified spirit. Accordingly, an amount of Rs.25,252/- was sought to be demanded on the allegation that the party have contravened the provisions of Section 3 and Section 9(1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Central Excise Rules, 2002.

3.2 The original authority dropped the proceedings initiated under notice dated 23.9.05. The order of the original authority was reviewed by the Commissioner and appeal was filed before the Commissioner (Appeals). Commissioner (Appeals) upheld the order of the original authority thus rejecting the appeal of the Department. Committee of Commissioners felt that the order of the Commissioner (Appeals) is not legal and proper and accordingly, directed filing of the appeal before CESTAT.

4. Learned DR reiterates the grounds of appeal. He submits that the amount payable in terms of Rule 6(3)(b) of Cenvat Credit Rules, 2004 should include the excess freight as the Rule itself refer to the total price excluding only sales tax and other taxes.

5.1 I have carefully considered the submissions and perused records. The issue involves interpretation of Rule 6(3)(b) which during the relevant period read as under:

"RULE 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services. —

(1)

(2)

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service,

opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely :-

(a)

(i) to (ix)

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to eight per cent of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale such goods at the time of their clearance from the factory".

5.2 From the above, it is seen that the amount payable is 8% of the total price of the exempted final product charged by the manufacturer for the sale of such goods at the time of clearance from the factory. Transportation is a cost incurred for activity after clearance from the factory , and thus the same cannot be included for the purpose of determining total price of the exempted goods. It has not been shown that the alleged excess freight collected by the respondents from the buyers of rectified spirit had any nexus with the price of the goods. The Commissioner (Appeals) has relied on the decision of the Hon'ble Supreme Court in the case of Baroda Electric Motors Ltd. vs. Collector - 1997 (94) ELT 13 (SC) in coming to the conclusion that profit made in such activity is not includible in the price of the goods. The decision of the Hon'ble Supreme Court is sought to be distinguished by the Department on the ground that the same related to the valuation under Section 4 and the same ~~was~~ would not apply to payments under Rule 6(3)(b) of Cenvat Credit Rules, 2004. This view of the Department is not acceptable. The ratio in determining the price by excluding the amount collected as freight as laid down in the judgment of the Hon'ble Supreme Court in the case of Baroda Electric Motor is certainly applicable to the facts of the present case.

5.3 Therefore, I do not find any reason to interfere with the concurrent findings of the authorities below dropping the proceeding involving demand

- of Rs.25,232/- in terms of show cause notice 23.9.05.

6. The appeal is, therefore, rejected.

(M. Veeraiyan)
Member (Technical)

scd/