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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/714 /2008 – SM[BR] Date 15/02/2010

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

To :
M/S NEOLI SUGAR FACTORY
POST: NEOLI NEOLI DISTT. EATH 2. MR. RAJ KUMAR, F.C.A,U-18, PAWAN PLACE,SAMAD ROAD,ALIGARH.

M/S NEOLI SUGAR FACTORY Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 211 / 2010 –SM[BR] dated 20.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult SHRI RAJ KUMAR, CA.
   U-18, PAWAN PLACE SAMAD ROAD, ALIGARH.

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 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 Kunj. 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
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(SM Appeal Branch)

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

Date of Hearing/Decision:20.01.2010

Excise Appeal No.E/714/2008 -SM

[Arising out of Order-in-Original No.04/Comm./Tech./Rem/ LkO/07 dated 24-31/12/2007 passed by the Commissioner, Central Excise, 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 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.Neoli Sugar Factory ...Appellant

Vs.

The Commissioner of Central Excise, Lucknow ... Respondent

Present for the Appellant :Shri.Raj Kumar, CA
Present for the Respondent:Shri.R.K. Saini, DR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER NO.** 211/2010, SM-(BR) **DATED:20.01.2010**

PER: RAKESH KUMAR

This is an appeal against Order-in-Original No. 04/Commr.4/Tech./Rem/LKO/07 Dated 24.12.07 passed by the Commissioner, Lucknow rejecting the application of the appellant for remission of duty on molasses kept in Kachha Pit. The appellant are manufacturer of sugar and molasses is a bi-product. 959917 Quintals molasses of 1986-87 sugar season claimed to be of below standard grade was stored in open Kachha Pit in terms of the Board's Circular No.261/15CC/4/82/CX-8 dated 22.10.82 according to which the sugar mills were allowed to store molasses in Kachha Pits subject to condition that no remission of duty on loss of molasses due to its storage in Kachha Pits is claimed. However, in this case, the storage of molasses in Kachha Pits was without any permission from the competent authority and without furnishing the bond required as per the Board's Circular dated 22.10.1982. The molasses remained in open Kachha Pit and it is only in March, 2005 that on test by the U.P. Excise Department, it was found that the molasses is totally lost due to seepage. On 10.5.05, the appellant submitted an application to the Jurisdictional Commissioner for remission of duty amounting to Rs.9,59,917 chargeable on this molasses claiming that it has been lost due to unavoidable natural causes. The Commissioner vide the impugned order-in-original dated 24.12.2007 rejected the remission application under rule 21 of Central Excise Rules 2002 mainly on the grounds that –

(a) the Board vide Circular No. 35/88-CX.8 dated 1.8.88 had categorically withdrawn the permission given earlier vide Board's Circular dated 22.10.1982 for storage of molasses in Kachha Pit/Tanks and hence after letter dated 1.8.88, there was no justification for the appellant to continue to keep the said molasses in Kachha Pit, and

(b) it is very clear that the appellant had not taken any necessary measures whatsoever, to prevent the deterioration of the molasses stored in open Kachha Pit and hence the loss of the said molasses cannot be said to be unavoidable.

1.1 The Commissioner also observed that the storage of molasses in Kachha Pit was without any permission from the competent Central Excise Authority. It is against this order of the Commissioner that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Raj Kumar, CA, ld. Counsel for the appellant, pleaded that the storage of the molasses of 1986-87 sugar season had been made in the Kachha Pit in accordance with the then Board Circular No.261/15CC/4/88.CX-8 dated 22.10.82, that the storage was without any permission from the jurisdictional Central Excise Authorities and no bond prescribed in the Board's Circular dated 22.10.82 had been furnished, that though the storage was without permission from the competent Central Excise Authority, it is in accordance with the Board's Circular dated 22.10.82, that the storage in Kachha Pit had been declared to the department in the RT 12 returns filed from time to time and the samples drawn had also been drawn by the Central Excise Authorities from time to time, that since the molasses was below grade, it was not feasible for the Appellant to keep the same in the covered steel tanks that on account of refusal of the U.P. Excise Deptt. for sale if the below grade molasses, it could not be sold, that it is only in March, 2005 when UP Excise Deptt. took the sample, it was found that molasses was totally lost due to seepage that thereafter the application for remission of duty was filed on 10.5.05, that the loss of molasses is due to normal seepage and drainage due to its storage in open Kachha pit and hence this is due to natural causes and, therefore, the remission is permissible in terms of the Tribunal's judgement in the case of Bilaspur Kisan Sahkari Chini Mills Ltd. vs. CCE, Kanpur 1987 (30) ELT 432, that the condition in the Board Circular dated 22/10/82 that in the event of loss of molasses due to storage in Kachha pit, the assessee cannot claim remission of duty has been held to be illegal by the Tribunal in its judgement in the case of Duhganga Vedganga Sahkari Shakkar Karkhana Vs. CCE, Pune reported in 1987 (29) ELT 22 (Trib.), that the Board's Circular No. 35/88-CX.8 dated 1.8.88 withdrawing earlier circular dated 22.10.82 was not applicable to the appellant's case, as the appellant had stored this molasses in Kachha Pit prior to the issue of circular No. 35/88-CX.8 dated 1.8.88, that the only reason for storage of this molasses, which was of below grade, in Kachha Pit for more than 20 years was because the refusal of the U.P. State Excise Department to permit its sale, and that in view of this, the Commissioners order rejecting the application for remission of duty on the molasses lost due to only causes which are natural is not correct.

2.2. Shri R.K.Saini, ld. DR opposing the appellant's plea, pleaded that the Board Circular No.261/15CC/4/88.CX-8 dated 22.10.82 permitted the storage of molasses in Kachha Pit subject to certain conditions, One of the main condition being that the assessee undertake, not to claim any duty remission in the event of loss due to seepage etc., the appellant while storing the molasses of 1986-87 sugar season had neither obtained the permission of the competent authority nor had furnished any bond, that though the Board Circular dated 22.10.82 permitting storage of molasses in Kachha Pit subject to certain conditions which was withdrawn on 1.8.88, the appellant still continue to store the molasses in Kachha Pit, that remission of duty under Rule 21, it is necessary that the loss of the excisable goods must be due to natural unavoidable causes, that in this case, there is nothing on record that the appellant had taken any precautions to prevent the loss of the molasses, that the molasses was kept stored in open Kachha Pit since 1986-87 for more than 20 years and there is nothing on record that the appellant had taken any steps to prevent its deterioration and that in view of this the Commissioner has correctly rejected the appellant's request for remission on duty.

3. I have carefully considered the submissions from both the sides and perused the records. The appellant had stored 7599.17 .. Quintals of molasses of 1986-87 sugar season in Kachha pit. Though the storage in Kachha pit was in terms of the Board's Circular dated 22.10.1982, prior to this storage the

appellant had not undertaken any permission from the competent central excise authorities and had not executed the required bond as prescribed in the Circular. There is also no dispute about the fact that since 1986-87 till the filing of remission application in May, 2005 the molasses had been kept stored in open Kachha Pit and there is nothing on record to show that any precautions or any measures had been taken by the appellant to prevent deterioration of the molasses, which without any doubt, is a highly perishable item. Under Rule 21 of Central Excise Rules the remission of duty on the excisable goods can be permitted by the competent central excise officers, only if the same have been lost or destroyed by natural causes or by unavoidable accident or claimed by the manufacturer as unfit for consumption or marketing at any time before its removal. In this case the reason for losses of molasses is its continued storage in open Kachha Pit and there is nothing on record to indicate that any precautions had been taken to avoid the loss. I also find that Boards circular dated 22.10.82 had been withdrawn on 1.8.88, but still the appellant continued to keep this molasses in open Kachha pit. In view of these circumstances, I am of the view that the Commissioner has rightly rejected the application for remission and as such there is no infirmity in the impugned order. The appeal is, therefore, dismissed.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita