TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2555/2009,2649/2009 - EX[DB] WITH E/S/2636,2734WITH E/COD/239/2009-EX

Date 30/03/2010

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

To :
M/S DSM SUGAR ASMOLI.
VILLAGE- ASMOLI, TEHSIL-SAMBHAL,DISTT-MORADABAD(UP)
244004

M/S DSM SUGAR ASMOLI. Appellant

Vs

C.C.E. MEERUT II STAY ORDER NO.193-194/2010 & MISC ORDER NO.222/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 131-132 2010 EX[DB]** dated 23-3-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise 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.RAJESH KUMAR
   24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.DELHI
3. C.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
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003,(Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT
19. SHRI GAURAV GOYAL, M.D
    M/S DSM SUGAR ASMOLI, VILLAGE ASMOLI,
    TEHSIL SAMBHAL
    DISTT. MORADABAD (U.P.)-244004.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Stay Application No. 2636 of 2009 in Appeal No. 2555 of 2009

M/s DSM Sugar Asmoli — Appellant

Versus

CCE, Meerut — Respondent

Excise Stay Application No. 2734 of 2009 with COD Application No. 239 of 2009 in Appeal No. 2649 of 2009

Shri Gaurav Goyal, M.D. — Appellant

Versus

CCE, Meerut — Respondent

[Arising out of the Order-in-Original No. 17/Commr./MRT-II/2009 dated 18/05/2009 passed by The Commissioner, Customs & Central Excise, Meerut.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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 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 Department Authorities?	:

Appearance

Shri Rajesh Kumar, Advocate – for the appellant.

Shri B.K. Singh, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/02/2010.
DATE OF DECISION : 23/3/2010

Final Order No. 131-132/10-EX Dated : 23/3/2010
STAY order No 193-194/10-EX
MISC order No. 222/10-EX

Per. Rakesh Kumar :-

The facts giving rise to these appeals alongwith stay applications are, in brief, as under.

1.1 M/s DSM Sugar Asmoli, District Moradabad, is a company engaged in manufacture of sugar of which molasses is a by-product. Both the sugar and molasses are chargeable to Central Excise Duty. Shri Gaurav Goyal, is a Managing Director of the appellant company. According to the appellant –

(a) On 6/4/07, there was an incident of auto-combustion of the molasses stored in RCC tank No. 4 of the appellant's company factory due to which 9156.6 M.T. of molasses was destroyed ;

(b) The intimation about the auto combustion of the molasses in tank No. 4 was given to the fire department and also to the Central Excise Department on 6/4/07 by post as well as telephonically and an FIR was also lodged in the police station in Asmoli and beside this, on 7/4/07 another letter regarding the auto combustion of molasses was handed over to the Jurisdictional Central Excise Inspector ; and

(c) subsequently on 30/5/07, the appellant company filed an application to the Commissioner for remission of duty on 9156.6 M.T. of molasses destroyed in fire.

1.2 In the meantime, a show cause notice dated 29/4/08 was issued to the appellant company seeking recovery of Central Excise Duty amounting of Rs. 70,73,474/- alongwith interest and also proposing imposition of penalty on them on the ground that on scrutiny of the ER-1 return for the month of April 2007, it was noticed that the appellant company had cleared 9156.6 M.T. of molasses without payment of Central Excise Duty claiming that the same has destroyed in fire accident due to auto combustion on 6/4/07 in RCC tank No. 4, that they have also deducted the said quantity of molasses from the stock available as on 6/4/07 and that they have not sought the necessary permission from the Competent Authority for remission of duty involved on such quantity of molasses.

1.3 The show cause notice was adjudicated by the Commissioner, Central Excise, Meerut – II vide order-in-original No. 17/Commr./MRT-II/09 dated 18/05/09 by which the duty demand of Rs. 70,73,474/- was confirmed against the appellant company alongwith interest under Section 11AB of Central Excise Act. The Commissioner also imposed penalty of equal amount i.e. Rs. 70,73,474/- (Rupees Seventy Lakh Seventy Three Thousand Four Hundred Seventy Four) on the appellant company under Section 11AC of Central Excise Act, 1944 and also the penalty of

Rs. 5,00,000/- (Rupees Five Lakh) on Shri Gaurav Goyal, the Managing Director of the appellant company. The Commissioner while passing this order, gave a finding that as per the records of his office, no application has been received for remission of duty on molasses claimed to have been lost due to fire. It is against this order that the appeals have been filed by M/s DSM Sugar Asmoli as well as Managing Director alongwith applications for waiver from the requirement of pre-deposit of duty demand, interest confirmed against the appellant company and penalties imposed on the appellant company and its Managing Director, and stay on their recovery till the disposal of the appeals.

2. Since there was sixteen day's delay in filing of appeal No. E/2649/09 by Shri Gaurav Goyal, an application No. 239/09 for condonation of delay has been filed on the ground that the delay was not intentional as the same was caused due to an objection raised by the Registry that separate appeals were required to be filed by the appellant company as well as by the Managing Director against the impugned order.

2.1 On going through the application of Shri Gaurav Goyal, MD of the Appellant company, for condonation of delay, we are satisfied that the reason given for 16 day's delay in filing of this appeal is genuine. The delay is accordingly condoned.

3. Heard both the sides at length.

3.1 Shri Rajesh Kumar, Advocate, the learned Counsel for the appellant pleaded that on 6/4/07 there was an accident of fire due to auto combustion in the molasses stored in RCC tank No.

4, that the fire in the molasses tank could not be prevented in spite of putting ice and water, that the incident of fire was promptly reported to police by filing an FIR as well as to Jurisdictional Central Excise officers on 6/4/07 as well as on 7/4/07, that on account of fire, 9156.6 M.T. of molasses was destroyed, that the accident about the fire was also intimated to State Excise Inspector on the same day and had been witnesses by him, that the Jurisdictional Central Excise officers visited the appellant's premises on 9/4/07 and took the sample of what was left from the burnt molasses in the RCC tank No. 4, that on 30/5/07 after quantifying the loss of molasses due to fire, an application was made to the Commissioner for remission of duty on the molasses lost in fire, that from the stamp regarding receipt on the remission application, it is clear that the remission application was received in the Commissionerate office on 31/5/07, that in view of the remission application pending before the Commissioner, the Commissioner before adjudicating the demand show cause notice demanding duty on the quantity of the molasses lost in fire, should have, first, decided the remission application, but Commissioner has confirmed the duty demand alongwith interest and has imposed penalty without deciding the remission application, that the Commissioner's observations in the impugned order that no such remission application has been received in the Commissionerate office are factually correct, that after submission of the application to the Commissioner for remission of duty on 30/5/07, the appellant had also sent reminders to the Commissioner on 12/6/07 and 11/8/07 requesting for early decision on the remission application, as they are being pressurised by the Pollution Control Department to remove and dispose of the damaged molasses at the earliest and, that in view of this, the impugned order is totally incorrect.

3.2 Shri B.K. Singh, the learned Jt. CDR, however, defended the impugned order reiterating the Commissioner's findings.

4. We have carefully considered the submissions from both the sides and perused the records.

5. These appeals were listed today for stay only. But after hearing both the sides, we are of the view that there is no point in keeping these appeals pending and accordingly the same are taken up for final disposal after waiving the requirement of pre-deposit.

6. Though the show cause notice dated 29/4/08 issued to the appellant gives the impression as if the Department was not aware of the loss of molasses in the appellant's factory due to fire on account of Auto combustion on 6/4/07, the appellant plead that the Jurisdictional Central Excise authorities had been intimated about the fire due to auto combustion in RCC tank No. 4 on 6/4/07 itself and also subsequently on 7/4/07 and, that subsequently on 30/5/07 they had submitted an application addressed to the Commissioner for remission of the duty. A copy of the application dated 30/5/07 for duty remission available in the appeal memo bears the Commissionerate's stamp dated 31/5/07 from which it prima facie appears this application had

been received in the Commissioner's office on 31/5/07. We also find that subsequently the appellant had vide letter dated 12/6/07 had reminded the Commissioner in this regard and subsequently on 11/8/07, the appellant in their letter addressed to the Jurisdictional Superintendent had asked for permission for removal of the burnt molasses at the earliest, as they are being pressurised by the Pollution Control Department to remove the same and a copy of this letter had been endorsed to the Commissioner as well as to the Jurisdictional Assistant Commissioner. The appellant have produced their correspondence with the Insurance Company with regard to their insurance claim in respect of molasses destroyed in fire and also their correspondence with State excise authorities in this regard. A photocopy of news paper cutting of "Amar Ujala" of 8/4/07 shows that news about this accident had also appeared in this newspaper on 8/4/07. When according to the appellant they had been corresponding with the Central Excise Department with regard to loss of molasses due to fire from the first day itself and they had also submitted an application for remission of duty, followed by two reminders and from the records, this appears to be correct, we find it is strange that the Commissioner has still refused to accept the appellant's plea that their application for remission of duty has been received in his office and is pending decision while all the evidence indicates to the contrary. Since prima facie application for remission of duty had been filed, first the decision should have been taken in respect of remission application and only then, the show cause notice should have been taken up for adjudication but the Commissioner has decided the show cause notice without taking any decision on the remission application. In view of this, the impugned order is not sustainable. The same is set aside and the matter is remanded to the Commissioner for denovo adjudication after first deciding the appellant company's application for remission of duty. The show cause notice is to be taken up for adjudication only after decision on the appellant's application for remission of duty. Both the appeals as well as stay applications stand disposed of, as above.

(Pronounced in open court on 23/3/2010)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK