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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/2639/2008-2640/2008 – SM[BR] Date 04/11/2010

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

M/S PRATAPPUR SUGAR INDUSTRIES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1151 -1152 / 2010-SM[BR] dated 22.10.2010 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 PRATAPPUR SUGAR INDUSTRIES LTD
   PRATAPPUR, DEORIA(UP)
2. Adv. / Consult SHRI PRADEEP K MITTAL ADV.
   171, CHITRA VIHAR, DELHI-92.

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)

3. M/S PRATAPPUR SUGAR INDUSTRIES LTD
PRATAPPUR, DEORIA(UP)

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

Excise Appeal No.2639-2640 of 2008
(Arising out of Order-in-Appeal No.81 & 82-CE/ALLD/2008 dated 16.10.08 passed by the CCE(A), Allahabad)

Date of Hearing: 22.10.2010
Date of Decision: 22.10.2010

For approval and signature:
Hon'ble Mr.Ashok Jindal, Member (Judicial)

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?	

CCE, Allahabad Appellant

Vs.

M/s.Pratapur Sugar Industries Ltd. Respondent

Present for the Appellant: Shri Anil Khanna, SDR
Present for the Respondent: Shri P.K.Mittal, Advocate

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 1151-1152/2010 SM (BR)

PER: ASHOK JINDAL

The Revenue has challenged the impugned order wherein it was held that Baggase is nothing but waste obtained during the manufacture of sugar.

2. The brief facts of the case are that the respondents are manufacturers of sugar and molasses. During the course of manufacture of sugar and molasses, a distinct excisable goods

known as baggase classifiable under chapter 23 of Schedule to the Act ibid is also produced. Baggase attracts nil rate of duty. The respondents are using common inputs for manufacture of both dutiable goods and as well as exempted goods. No separate account has been maintained for such inputs which they are required to maintained under Rule 6 (3)(b) of Cenvat Credit Rules,2004. A show cause notice was issued to the respondents and the demand was confirmed. Aggrieved by the said order, the respondents have filed the appeal before the Commissioner(Appeals), who set aside the adjudication order holding that Baggase is nothing but waste obtained during the manufacture of sugar relying upon the decision of the Apex Court in the case of CCE vs. Shakumbari Sugar & Allied Industries Ltd. reported in 2005 (189) ELT A62 (SC).

3. The learned DR submitted that the department has filed Civil Appeal No.279/05 in the case of Balrampur Chini Mills and the same is pending for decision before the Apex Court and hence the impugned order is to be set aside.

4. On the other hand, learned Advocate for the respondents submits that this issue has already been dealt with by this Tribunal in a number of cases particularly, in the case of CCE, Meerut-I vs. Shakaumbari Sugar & Allied Industries Ltd. reported in 2004 (176) ELT 819 (Tri.-Del.) wherein this Tribunal held as under:

> *"We have considered the submissions of both sides. Rule 57CC of the Central Excise Rules applies only in those cases where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as any other*

final product, which is exempted from the whole of the duty of excise or is chargeable to nil rate of duty. Baggase is obtained by the respondents in the course of manufacture of sugar out of cane sugar. Baggase may find a mention in the Schedule to the Central Excise Tariff Act, but it has not become a final product merely on the fact that it is mentioned in the Tariff. This is nothing but a waste obtained during the manufacture of sugar. The provisions of Rule 57D(1) of the Central Excise Rules clearly provides that credit of duty shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse or by-product arising during the manufacture of the final product. As waste cannot be regarded as a final product, provisions of Rule 57CC are not applicable. This was the view held by the Tribunal in the case of Rudra Bilas Kisan Sahkari Chini Mills Ltd. (Supra). We, therefore, find no infirmity in the impugned order and reject the appeal filed by the Revenue.'

5. The same view has been affirmed by the Apex Court.

6. I find that the issue has already dealt with by the Apex Court in the case of CCE, Meerut-I vs. Shakaumbari Sugar & Allied Industries Ltd. and the same has been settled in favour of the Assessee. I am also relying on the said decision, held that the respondents are not liable to reverse the credit on Baggase. Hence, I do not find any reason to interfere with the impugned order and the same is upheld.

7. The appeals filed by the Revenue are rejected. The Cross objections are also disposed of in the above manner.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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