

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/1877/2008 – SM[BR] E / CO / 337 / 2008 –SM[BR]

Date 06/12/2010

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.
C.C.E. LUCKNOW

M/S OUDH SUGAR MILLS LTD.

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1337 / 2010-SM[BR]** dated 18.11.2010
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S OUDH SUGAR MILLS LTD.

HARGAON, SITAPUR (UP)

2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.
FA-2, KAVI NAGAR GHAZIABAD

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 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

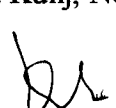
11 Easy Service Tax Online Dot Com Pvt.Ltd. 407A. Iscon Mall. Above Star India Bazar. Satellite Road. Ahmedabad-15

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

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

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Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

**Excise Appeal No. 1877 of 2008-SM(BR)
Excise Cross Objection No. 337 of 2008-SM(BR)**

[Arising out of Order-in-Appeal No. 69/CE/LKO/2008 dated 29.5.2008
passed by the Commissioner of Central Excise(Appeals), Lucknow]

For approval and signature:

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

1. Whether Press Reporters may be allowed to see : *Yes*
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 : *Yes*
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair : *Seen*
copy of the Order?

4. Whether Order is to be circulated to the : *Yes*
Departmental authorities?

Commissioner of Central Excise
Lucknow

Appellants

Vs.

M/s. Oudh Sugar Mills Ltd.

Respondent

Appearance: Shri K.P. Singh, SDR for the Appellants
Shri Rajesh Chhibber, Advocate for the Respondent

Date of Hearing/decision : 18.11.2010

final

ORAL ORDER NO. 1337 / 2010 SM (BR)

Per M. Veeraiyan:

Appeal No. E/1877/08 is by the department against the order of the Commissioner (Appeals) No. 69/CE/LKO/2008 dated 29.5.08. Cross Objection 337 /08 is connected to this appeal and the same is basically in support of the order of the Commissioner (Appeals) without claiming any further benefits.

2. Heard both sides extensively,

3. The relevant facts, in brief, are that the respondent is a manufacturer of VP sugar and molasses. During the season 1999-2000, they re-processed left over brown sugar of season 1997-98, 1998-99 and also scrap sugar and jelly of season 1998-99; similarly they reprocessed brown sugar and scrap sugar of season 1999-2000 during the season 2000-01 and the left over brown sugar and scrap sugar of 2000-01 in season 2001-02 etc. Show cause notice dated 24.1.05 was issued alleging that there was less recovery of sugar reprocessed during 5 sugar seasons namely, 1999-2000 to 2003-2004. It was alleged in the show cause notice that the quantity reprocessed was 35,390 Qtls and quantity of sugar recovered was only 23809 Qtls and consequently there was loss of 11,581 Qtls. and accordingly, proposed demand of duty of Rs.9,84,385/-. Respondents contested the show cause notice on merits as well as on time limit. The original authority confirmed the demand and imposed equal amount as penalty. On appeal by the respondents, the Commissioner (Appeals) set aside the order of the original authority. Hence, the department is in appeal.

4. Learned SDR, reiterating the grounds of appeal, submits that presence of molasses if any, in brown sugar is only minimal; that the respondents having entered the quantity of brown sugar, scrap sugar and jelly in their production records, they ought to have claimed remission of duty for the quantity of sugar lost in reprocessing. He also submits that the reprocessing loss claimed is abnormally high and is around 32.7%. He also submits that in the case of M/s. Kisan Sahakari CHini Mills Ltd. vs. Commissioner of Central Excise, Allahabad, reported in 2005 (191) ELT 0696 relied upon by the Commissioner (Appeals), the loss was only to the tune of 6.1%.

5.1 Learned advocate for the respondents supports the order of the Commissioner (Appeals). The claim of the department that there was loss is incorrect. It is clear from the records that the reprocessing of 35,390 Qtls of brown sugar and scrap sugar has led to emergence of 23,809 Qtls. of sugar and 12518 Qtls of molasses. Drawing my attention to the grounds of appeal, learned advocate pointed out that the department has taken note of payment of duty of Rs.6,25,900/- on 12518 Qtls. of molasses. He also submits that as rightly noted by the Commissioner (Appeals), the emergences of brown sugar, scarp sugar were evident from periodical returns submitted to the department in the form of RT -7 (c) and RT 8(c). He also claimed that demand is also hit by time bar. He seeks upholding the order of the Commissioner (Appeals).

5.2 He also submits that the so called brown sugar is not marketable as such and it consists of recoverable sugar and molasses in different

proportions. Drawing my attention to the decision of the Tribunal in the case of Bharat Sugar Mills case reported in 1994 (69) ELT 386, he submits that the so called brown sugar cannot be treated as sugar. He also adds that against the said decision of the Tribunal, the department filed appeal and Hon'ble Supreme Court has dismissed their appeal. He also draws my attention to the decision of the Tribunal in the case of UP Sugar and Cane Development Corpn. reported in 2008 (231) ELT 157 wherein it has been held that the product having not reached marketable stage, brown sugar obtained in such circumstances cannot be considered as sugar.

6. I have carefully considered the submissions from both the sides and perused the records. The show cause notice has alleged unexplained losses of sugar of 11,581 Qtls. of sugar while reprocessing 35390 qtls. of brown sugar / scrap sugar. The records including the appeal memo by the department clearly acknowledges the claim of the respondent that in addition to 23,809 Qtls. of sugar recovered 12,518 Qtls of molasses were also recovered and duty stands paid on such molasses. Therefore, allegation that there was loss of 32.7 percentage in quantitative terms is factually not correct. The grounds of appeal, after taking note of the above finding of the Commissioner (Appeals) do not contest the said findings.

7. The decision relied upon by the learned advocate on behalf of the respondents go to show that the brown sugar/ scrap sugar are not marketable as such and requires reprocessing. This contention has not been rebutted. It cannot be the case of the department that reprocessing of 35390 Qtls. of brown sugar / scrap sugar should yield the same quantity of sugar. It is

obvious that the percentage of recovery of sugar during reprocessing will depend upon the extent of molasses available in such brown sugar / scrap sugar. Under these circumstances, to rely on a percentage arrived at in the case of M/s. KSCM Ltd. cited supra as an outer limit is not appropriate. Regarding the claim on behalf of the department that application for remission of duty ought to have been obtained, the same cannot be accepted in the facts and circumstances of the case. The material used for reprocessing could not be treated as excisable and it is not being disputed that the same has been issued for reprocessing after sending intimation in advance during every season starting from 1999-2000 to 2003-2004. It is also not being disputed that the said quantity has been issued for reprocessing and 23809 MT of sugar and ~~molasses amounting to~~ⁱⁿ 12,518 qtls molasses have emerged and cleared on payment of duty. Further, the allegation of loss of 11,581 qtls. was also found to be baseless.

8. Under these circumstances, I do not find any merit in the appeal by the department. The appeal of the department is rejected. Cross Objection which is merely in the support of the order of the Commissioner (Appeals) is also disposed of.

(M. Veeraiyan)
Member(Technical)