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THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/1040/2000-NB(SM)

Dated: 30/1/2001

CEGAT  
NEW DELHI  
To,

M/s Kishan Sahakari Chini Mills Ltd.,

Puran Pur,

Distt. Pilibhit (U.P)

In the matter of :

M/s Kisan Sahakari Chini Mills Ltd.,

Appellant

vs.

CCE Ghaziabad

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/143/2001-NB(SM)  
Dated : ..... 1.9.1.2001 ..... passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

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Asstt. Registrar  
NB(SM)

1. CCE Ghaziabad
2. CCE/EE/(Appeal) Ghaziabad
3. Chief Commissioner of Central Excise / Customs: Kanpur
4. Adv./Consult. Shri Kapil Vaish, C.A.  
B-51, Butter Plaza,  
Civil Lines, Bareilly (U.P)
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
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CUSTOMS EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL,  
NEW DELHI

Appeal No. 1040/2000-NB(S)

(Arising out of Order-in-Appeal No. 111-CE/KNP-II/99  
dated 18.11.99 passed by the Commissioner (Appeals),  
Customs & Central Excise, Ghaziabad.)

M/s. Kisan Sahkari Chini Mills Ltd. Appellants,  
Reptd. by Shri Kapil Vaish, C.A.

Versus

CCE, Ghaziabad Respondent,  
Reptd. by Sh. A.K. Jain, SDR

*Final* ORDER NO. *A/142/01/ NB S/A* DATED 19.1.2000

Per V.K. Agrawal:

The issue involved in this appeal filed by M/s. Kisan Sahkari Chini Mills is whether there was any excess quantity of molasses in the storage tank which is liable for confiscation and consequential imposition of penalty.

2. Shri Kapil Vaish, learned Chartered Accountant, submitted that on 5.11.97 when the Central Excise Officers checked the physical stock of molasses it was found to be 22,865 quintals as against book stock of 21,483 quintals; that the physical stock was measured by dip method which has its inherent weaknesses; that variation in stock of molasses is inevitable due to nature of the product. He referred to Handbook Cane Sugar Engineering by E. Hugot, according to which there may be variation in the weight of the molasses 10% to 15%. He relied upon the decision in the case of Bajaj Hindustan Ltd. vs. CCE, Kanpur, 1994 (72) ELT 710 (Tribunal)

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wherein it was held that ISI specification clearly indicate that 10% allowance always be given for foaming during ~~search~~<sup>storage</sup> of molasses and that during foaming dip reading measurement cannot indicate exact weight. The Tribunal, therefore, in the said case set aside the confiscation and imposition of penalty. He also relied upon the decision in the case of Ghatampur Sugar Co. Ltd. vs. CCE, Kanpur, 1996 (85) ELT 69 (Tribunal). The learned Chartered Accountant submitted that in the present matter the difference in weight is about 6% only which is well within the limit mentioned in ISI specification.

3. Countering the arguments Shri A.K. Jain, learned D.R., submitted that in both the decisions relied upon by the learned Chartered Accountant the fact of foaming had not been disputed by the Department; that in fact, in Ghatampur Sugar case the Adjudicating Authority had admitted the fact of foaming by mentioning that there was no doubt about formation of foam in molasses which may vary with ambient temperature and chemical decomposition during the fuggalling process when air bubbles get ~~entrained~~ and also when steam is pressed into pipeline. Learned D.R. mentioned that in the present matter Commissioner (Appeals) has clearly given his findings that there was no foaming at the time of dip measurement. In reply the learned Advocate mentioned that when the statement of Shri P.C. Bhartiya, the Appellants' Chief Chemist was recorded on 5.11.97, the date on which Central Excise Officers visited their premises, he clearly mentioned that the exact quantity of molasses stored in steel <sup>tanks</sup> within the factory premises cannot be ascertained due to the fact of atmospheric temperature which was high

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and as a result of which there was sufficient amount of foam in the tanks. He, further, mentioned that in view of this fact it cannot be said that there was no foam at the time quantity was measured by dip method.

4. I have considered the submissions of both the sides. It is apparent from the statement of Shri Bhartiya, Chief Chemist of the Appellants, that sufficient amount of foam was there in the tank and he pointed out that exact quantity of molasses cannot be ascertained. There is no rebuttal of this statement which was recorded on the date of visit of the officers. Moreover the Tribunal in both the decisions relied upon by the learned Advocate has held that during <sup>foaming.</sup> dip reading measurement cannot indicate exact weight and in both the cases the appeals were allowed. The ratio of both these decisions squarely applies to the facts of the present matter and following the same the impugned Order is set aside and the appeal is allowed.

(V. K. AGRAWAL)  
MEMBER (TECHNICAL)

Dated 22nd January, 2001

RK