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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2711-2712/2005 - EX[DB] Date **25/05/2011**

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

To :
M/S MONNET INDUSTRIES LTD.(SUGAR DIVISION)
(NOW KNOWN AS MONNET SUGAR LTD.)
BLOCK UNN,DISTT MUZAFFAR NAGAR U.P.

M/S MONNET INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.439-440/ 2011 EX[DB]** dated 18-5-11 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 I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.K.K.GUPTA
B-137, IIND FLOOR, RAMPRASTHA, GHAZIABAD

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

ASSISTANT REGISTRAR
(EX.APPEAL BRANCH)

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

DIVISION BENCH.

Excise Appeal No.2711-2712 of 2005

(Arising out of Order-in-Original No.06/Commisoner/M-1/2005
dated 19.05.2005 passed by the CCE, Meerut-I)

Date of Hearing: 05.05.2011
Date of Decision: 05.05.2011

M/s.Monnet Industries Ltd.
(Now known as Monnet Sugar Ltd.) Appellant

Vs.

CCE, Meerut-I Respondent

Present for the Appellant: Shri K.K.Gupta, Advocate
Present for the Respondent: Shri I.Baig, SDR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

FINAL **ORDER NO.** 439-440/2011-EX

PER: D.N.PANDA

Appellant's precise grievance in these two appeals is that while handling and storing molasses, natural loss thereof occurred. CBEC vide its letter No.261/15/82/CX.8 dated 18.07.1983 has clarified that such loss to the extent of 2% is permissible in an year and no duty on such loss shall be levied. The quantity lost is not disputed by the department. But because such loss was not intimated within 24 hours there was denial of remission of duty. But CBEC's guideline was not examined in its proper perspective. On flimsy ground of belated intimation to the Commissioner and without any information to the Divisional Assistant Commissioner, storing loss was disallowed and duty was levied disregarding prayer for remission.

2. On the other hand, learned SDR submits that appellant was not able to explain the reasons of the loss and prevented the department to ascertain the loss expeditiously for which denial of remission of duty was made appropriately.

3. Heard both sides and perused the records.

4. When record does not reveal ~~arise of any~~ any abnormal loss ~~loss~~, we tried to find out whether the permissible loss aspect was explained by the appellant to the authorities below. In its grounds of appeal, the appellant has explained at page 10 of the appeal folder in the statement of facts that by a letter dated 25.5.1998, causes ~~arise~~ of natural loss were ~~was~~ brought to the notice of the authorities as under:-

"*(a) Molasses remain sticked on entire walls/floor of the storage tank and it get washed away when the tank is emptied/dried.*

(b) Molasses are filled in the tankers through pipelines attached to the storage tank. As and when the tanker is filled upto desired quantity the valve of the storage tank is closed and thereby some quantity remained in the pipelines adjoining tanker and the storage tank. This quantity is a waste. Some leakage of molasses do occur at the time of closing of the valves when the pipeline is removed from the tanker. These losses are unavoidable."

5. The reasons explained as above was not considered by the learned Commissioner who rejected the remission application. He only proceeded on the terms of a trade notice No.206/84 dated 01.12.1984 requiring lodging of claim within 24 hours of occurrence. We are unable to appreciate the basis of trade notice

in the absence of statutory provision authorising issuance thereof. Prescribing a procedure not known to law is not acceptable. Learned appellate authority failed to follow guideline of Board as aforesaid. Therefore, dispute should not perpetuate. The appellant succeeds and both the appeals are allowed.

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

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