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

REGISTERED / AD
Email : cestat08@gmail.com

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

Date **04/06/2012**

Appeal No. E/1118/2011 - EX[DB]

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

To :
M/S SANWARIA AGRO OILS LIMITED,
E-1/1, AREA COLONY BHOPAL (M.P.)

M/S SANWARIA AGRO OILS LIMITED, Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/645 2012 EX[DB]** dated 30-5-12 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.P.C.KASHIV
E-3/49,STOP NO 10,KAMDAR MARKET,BHOPAL

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-3
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
(Excise Appeal Branch)

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

Excise Appeal No. 1118 of 2011

[Arising out of Order-in-Original No. 195/BPL/2010 dated 21.12.2010 passed by the Commissioner of Customs & Central Excise(Appeals), Bhopal]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

---

M/s. Sanwaria Agro Oils Ltd. Appellants

Vs.

Commissioner of Central Excise Customs, Bhopal (MP) Respondent

Appearance:

Shri P. C. Kashiv, Consultant for the Appellants
Shri I. Baig, AR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing : 16.2.2012
Date of decision : .2012

FINAL **ORAL ORDER NO.** A/645/2012-EX(BR)

Per Archana Wadhwa (for the Bench):

The appellant is engaged in the manufacture of Lecithin falling under chapter 29 of Central Excise Tariff Act. The said Lecithin was exempted till 28.2.06 and became dutiable from 1.3.06 with issuance of notification No. 21/06 dated 1.3.06, vide which earlier exemption notification No. 115/75 dated 30.4.75 was rescinded.

2. The dispute in the present appeal relates to clearance of 26.03 MT of Lecithin, which according to the appellant was sold in February, 2006 by way of ~~reasonable~~ commercial invoice in the name of M/s. Ashok Dal and Oils Mills but were actually cleared by them in the ~~manufacture~~ month of June and July, 2006. The appellants contention is that inasmuch as the goods were sold on 25.2.10 & 27.2.10 by way of raising sales invoices, and the Lecithin was not lifted by their buyers and remained stored with them and was ultimately removed in June and July, the same have to be considered as having been cleared in February itself when no duty was leviable. On the other hand, the lower authorities have held that inasmuch as the Lecithin was actually cleared in June and July, 2006, when they attracted duty, the appellant are liable to pay duty.

3. The lower authorities have relied upon the provisions of Rule 5 of Central Excise Rules, which provide for determination of duty. For better appreciation , the said Rule is reproduced below:

> "Rule 5 – Date for determination of duty and tariff valuation – The rate of duty or tariff value applicable to any

> excisable goods, other than Khandsari Molasses, shall be the rate or value in force on the date when such goods are removed from a factory or warehouse, as the case may be."

As is clear from the above rule, the rate of duty applicable to the excisable goods shall be the rate in force on the date when such goods are removed from the factory. Inasmuch as admittedly the said goods were removed from the factory in the month of June and July, 2006 when they attract duty, we are of the view that confirmation of demand of duty against the appellant is in accordance with law. Mere fact that the sales invoices were raised in February, 2006, when the goods were exempted, but no removal took place, by itself cannot be held to be shifting the date of removal to February, 2006. In terms of said Rule, it is the date of actual and physical removal of goods from the factory which has to be taken into consideration. As such, we find no possible ground to interfere in the order of the authorities below, confirming demand of duty of Rs.1,03,168/- along with confirmation of demand.

4. In addition, to confirmation of demand, lower authorities have also imposed penalty of identical amount under Section 11AC of the Central Excise Act and of Rs.25,000/- under Rule 25 of Central Excise Rules, 2002. Penalty under Rule 25 stand set aside by Commissioner (Appeals). As regards penalty , under section 11AC, we find that since it is not a case of suppression or of clandestine clearance and the issue involved is a legal interpretation of law, we are of the view that no malafide can be attributed to the appellant so as to impose penalty upon

them. Accordingly, while confirming demand of duty, we set aside the imposition of penalty of Rs.1,03,168/- imposed under Section 11AC of the Act.

5. Appeal is disposed of in the above terms.

(Pronounced in the open court on 30/5/12

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

ss