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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/2634/2005-EX[DB]

Dated: **17/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E.ALLAHABAD U.P.
38 M.G. Marg,Civil Lines Allahabad U.P.

C.C.E.ALLAHABAD U.P. (Appellant)

VS

KISAN SAHKARI CHINI MILLS LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1220/2012-EX[DB]** dated **11/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

17/10/12
Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
KISAN SAHKARI CHINI MILLS LTD.
Ghosi Distt Mau U.P.

2. Advocate(s) / Consultant(s): SH. VIKRANT KACKRIA, ADV., 509, SECTOR-7, PANCHKULA

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Appeal No.2634 of 2005

(Arising out of Order-in-Appeal No.73-CE/ALLD/2005 dt.30.06.2005 passed by the CCE(A), Allahabad)

Date of Hearing/Decision: 11.10.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, 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?	
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 — Appellants

Vs.

M/s.Kisan Sahkari Chini Mills Ltd. — Respondent

Present: Shri M.S.Negi, DR for the Appellant
Present None for the respondent

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Mr.Rakesh Kumar, Member (Technical)

FINAL **ORDER No.** A/1220/2012-EX(BR)

Per:Justice Ajit Bharihoke

This appeal is directed against the order of the Commissioner (Appeals) dated 30.06.2005 whereby he set aside the order in original dated 31.1.2005 passed by the Assistant Commissioner of Central Excise and dropped the duty demand of Rs.63,750/- with interest.

2. Briefly stated the facts relevant for disposal of this appeal are that the appellants are engaged in the manufacture of V.P.Sugar and molasses. During the course of scrutiny of RT-7 returns and ER-1 returns of the appellant, it was found that for the months of December, 2003 to March, 2004, a total quantity of 10821 Qtls of BISS sugar (damaged sugar) was reprocessed by the appellant and in the reprocessing of sugar, 750 Qtls of sugar was lost. The department taking note of the aforesaid loss of sugar, issued demand notice to the respondent for recovery of Rs.63,750/- as excise duty alongwith interest. Show cause notice proposed to impose penalty on the appellant for violation of Rules 4, 6, 8 12 of Central Excise Rules, 2002.

3. Jurisdictional Assistant Commissioner confirmed duty demand of Rs.63,750/- with interest. He, however, did not imposed penalty on the appellant. The respondent being aggrieved of the aforesaid order preferred an appeal before the Commissioner (Appeals) who vide impugned order in appeal took the view that the department had not been able to show that any illicit clearance of standard sugar and that lost sugar during reprocessing of damaged sugar could not be subjected to excise duty. Thus, he accepted the appeal and set aside the order in original.

4. The respondent has failed to cause an appearance despite calls. So we have proceeded to decide the appeal ex-parte.

5. Shri M.S.Negi, learned DR for the appellant has contended that if the sugar was damaged before removal, the respondent could have applied for remission of excise duty under Rule 21 of Central Excsie

Rules, 2002 instead of reprocessing the damaged sugar which resulted in loss of sugar. Thus, respondent is liable to pay excise duty for sugar lost in the reprocessing of damaged sugar. Thus, he urged us to accept the appeal and restore the order in original.

6. We have considered the rival submission and perused the records.

7. Undisputedly, this is not the case of clandestine or illegal removal of the sugar without payment of duty. The case of the department is that a quantity of 10821 Qtls of sugar manufactured by the appellant got damaged before it could be sold in the market as a result reprocessing was undertaken to make sugar marketable and in the course of reprocessing 750 Qtls of sugar was lost. If we go by these facts, it is obvious 750 Qtls of sugar regarding which the Revenue has claimed excise duty was not removed/marketed by the respondent and it was lost during the manufacturing process to make it marketable. Therefore, there could be no incidence of levy of excise duty on the sugar lost in the reprocessing of damaged sugar to make it marketable. Thus, we do not find infirmity in the impugned order of the Commissioner (Appeals) allowing the appeal of the respondent and setting aside the order in original.

8. In view of the above, appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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