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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

CROSS Application No. : E/CROSS/123/2006
COD Application No. : E/COD/128/2006
Appeal No. : E/36/2005-EX[DB]

Dated: **18/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH
226001

C.C.E. & S.T.-Lucknow (Appellant)

VS

Kisan Sahkari Chini Mills Ltd. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1230/2012-EX[DB]** dated **09/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

18/10/12

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
Kisan Sahkari Chini Mills Ltd.
Powayan Distt Shahjahanpur

2. **Advocate(s) / Consultant(s):**
SH. P. K. SINGH, ADV.,
112, LAWYER CHAMBER,
SUPREME COURT OF INDIA, N. DELHI-

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

18/10/12

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

<u>DATE OF HEARING/DECISION : 09/10/2012</u>

Excise Appeal No. 36 of 2005 and COD Application No. 128 of 2006 with CO Application No. 123 of 2006

[Arising out of the Order-in-Appeal No. 300-CE/2004 dated 28/09/2004 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities?	:

CCE, Lucknow — Appellant

Versus

M/s Kisan Sahkari Chini Mills Ltd. — Respondent

<u>Appearance</u>

Shri R.K. Verma, Authorized Representative (DR) – for the appellant.

Shri P.K. Singh, Advocate – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. A/1230/12-B.(Bf) Dated : ____________

Per. Rakesh Kumar :-

The facts leading to this appeal by the Revenue and Cross objection by the Respondent are, in brief, as under.

1.1 The respondent are manufacturers of sugar and molasses. Department's allegation against the respondent is that during period from April 1996 to July 1996, they removed 45,174 qntl. of molasses from approved place of storage within the factory to Katcha Pits No. 5 & 6, which are also within the factory but not approved. This transfer of molasses from approved storage tank to unapproved Katcha Pits had been informed by the respondent to the Department vide their letter dated 6/11/97. According to the Department, this was in violation of the Rules 47 (3) and 49 (1) of Central Excise Rules, 1944 and the instructions of the Board under Rule 233 of Central Excise Rules, 1944 vide Circular No. 35/88 dated 1.8.88 in as much as, the above-mentioned quantity of molasses manufactured by them was un-authorisedly stored in unapproved place of storage - Katcha Pits No. 5 & 6. Accordingly, a show cause notice dated 31/12/97 was issued to the respondent for demand of duty amounting to Rs. 17,88,390/- @ Rs. 50/- per qntl. for unauthorised removal of molasses to Katcha Pits. This show cause notice was adjudicated by the Additional Commissioner, who vide order-in-original dated 25/2/99 confirmed the above-mentioned duty demand against the respondent and imposed penalty of equal amount on them under Section 11AC.

1.2 The respondent filed an appeal before the Commissioner (appeals) against the above-mentioned order of the Additional Commissioner. The Commissioner (Appeals) vide order-in-appeal dated 28/9/04 held that –

(a) The molasses had been stored in Katcha pits under intimation to the Department and the RG-1 register ;

(b) Out of total stock of 45174 qntl. stored in Katcha pits, 17145.25 qntl. had been cleared on payment of duty during June 1996 to October 1997; and

(c) since Katcha Pits No. 5 & 6 though unapproved were within the factory premises, there was no removal of the molasses and, hence, the allegation of clandestine removal against the assessee is not sustainable.

The Commissioner (Appeals) observing that the assessee (respondent) have paid duty on the clearances effected between June 1996 to October 1997 also held that duty demand of Rs. 17,88,390/- is confirmed to the extent the duty is payable on the balance stock of 28,028.75 qntl. if the same is not paid. She, however, set aside the imposition of penalty observing that the respondent had pleaded that they were not aware of the Circulars and it is also a fact that Jurisdictional Departmental officers had not taken action on the request of the respondent for granting permission for storage in the Katcha Pits for nearly one and half years.

1.3 Against the above order of the Commissioner (Appeals), this appeal has been filed by the Revenue and in respect of the Revenue's appeal, the respondent have filed a cross-objection.

2. Heard both the sides.

3. Shri R.K. Verma, the learned DR, assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeal and pleaded that the respondent during April 1996 to July 1996 period had without any permission removed 45,174 qntl. of molasses from approved stored place to unapproved Katcha Pits within the factory premises, that at the time of removal to unapproved Katcha Pits, they were required to discharge the duty liability, that when the respondent had intimated the department vide their letter dated 6/11/97 regarding storage of molasses in unapproved Katcha Pits, out of total quantity of 45,174 qntl. transferred to those unapproved Katcha Pits, a quantity of 35,767.8 qntl. of molasses was still there in respect of which duty liability had not been discharged, that on this quantity the duty was liable to be paid @ Rs. 50/- per qntl. and it is on this quantity that the duty demand of Rs. 17,88,390/- had been confirmed and that since the molasses had been un-authorisedly transferred to unapproved Katcha Pits without discharging duty liability, the Commissioner (Appeals)'s order setting aside the penalty is not correct. He, therefore, pleaded that the impugned order is not correct.

4. Shri P.K. Singh, Advocate, the learned Counsel for the respondent, pleaded that there is no dispute that the Katcha Pits No. 5 & 6 though unapproved were within the factory, that, therefore, there was no removal of the molasses from the factory, that duty had been paid as and when the molasses was removed from its place of storage and that in view of this, there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. The allegation against the respondent is that during the period from April 1996 to July 1996 they un-authorisedly removed 45,174 qntl. of molasses stored in approved molasses to Katcha Pits No. 5 & 6 which were not approved for storage and, therefore, not only they were liable to pay duty on this quantity at the time of storage in Katcha Pits, they were also liable for penalty. Accordingly, the duty of Rs. 17,88,390/- had been demanded on the quantity of 35,767.8 qntl. of molasses which was lying in stock as on 6/11/97 when the respondent informed the department about the storage of molasses in Katcha Pits. There is no dispute that the balance quantity had been cleared on payment of duty at the appropriate rate. In our view, when there is no dispute that the unapproved Katcha Pits No. 5 & 6 were within the factory premises, there was no removal of the molasses from the factory and, as such, no contravention of any law. It is not disputed that the molasses stored in Katcha Pits is cleared on payment of duty as and when the same was removed

from the factory. In view of this, we do not find any infirmity in the impugned order. The Revenue's appeal is dismissed. The Cross Objection filed by the respondent also stands disposed of.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK