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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

STAY Application No. : E/Stay/1515 & 2595/2012
Appeal No. : E/1203/2012- &1954/2012EX[DB]

Dated: **03/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Uttam Sugar Mills Ltd
Khaikheri, Purkaji, Distt. Muzaffarnagar
(u.p.)

Uttam Sugar Mills Ltd (Appellant)

VS

C.C.E. & S.T.-Meerut-i (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/901-902/2012-EX[DB]**, Stay Order No. **SO/1210-1211/2012** dated **27/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Meerut-i
EXCISE CHOWK...UNIVERSITY
ROAD...MANGAL PANDEY NAGAR,
MEERUT,250005

2. **Advocate(s) / Consultant(s):**
Bipin Garg
B-1/1289,A-Vasant Kunj, New 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. Office Copy

13. 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 Stay application No.1515 & 2595 of 2012 in Excise Appeal No.1203 & 1954 of 2012

(Arising out of OIA no.01-CE/MRT-I/2012 dt.4.1.2012 and OIA no.60-CE/MRT-I/2012 dt.5.3.2012 passed by the CCE (A), Meerut-I)

Date of Hearing/Decision: 27.07.2012

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?	

Uttam Sugar Mills Ltd. Appellants

Vs.

CCE, Meerut-I Respondent

Present: Shri Mayank Garg, Advocate for the Appellant
Present Shri I.Baig, AR for the department

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

STAY orders No 1210-1211/2012-Ex(BR)
FINAL Order No. A/901-902/2012-Ex(BR)

Per: Rakesh kumar

The appellant manufacture sugar and molasses chargeable to central excite duty. In the course crushing of sugarcane bagasse arises which is generated as reside and waste product. The department was of the view that since bagasse is excisable product with nil rate of duty, it is "exempted goods" within definition of this term as given in Rule 2(d) of Central Excise Act, 1944 and since cenvated inputs have been used in or in relation to manufacture of dutiable as well exempted goods and nor separate accounts of inputs have not been maintained, in respect of clearances of bagasse an amount equal to 10% of sale value would be chargeable under Rule 6 (3) (b) of Cenvat Credit Rules. On this basis, demands of Rs.3,52,277/- and Rs.1,15,380/- were confirmed against the appellant in respect of clearances of bagasse alongwith interest and the same were upheld by the Commissioner (Appeals) vide order in appeal dated 04.01.2012 and 05.03.2012. Against these orders of the Commissioner (Appeals), these appeals and stay applications have been filed by the appellants.

2. Heard both sides.

3. Though the matters are listed only for hearing of stay applications, since a short issue is involved which already stands decided in favour of the appellants, requirement of pre-deposit is waived and with the consent of both sides, the appeals are taken up for final disposal.

4. Both sides agree that the issue involved in these cases stands decided in favour of the appellants by the Tribunal in the matter of **Indian Potash Ltd. vs. CCE, Allahabad- 2012 (281) ELT 622 (Tri.-Del.)** wherein it was held as under:

> "*We have considered the rival submissions. We find that bagasse emerges in course of crushing of the sugar cane. It may be noted that crushing of sugarcane is necessary to extract cane sugar juice which in turn is processed for production of sugar and molasses. Bagasse is the waste product left after the crushing of sugarcane. Therefore, by no stretch of imagination it can be said that the assessee* could *possibly have maintained separate accounts of the inputs for production of sugar and*

molasses (excisable item) and bagasse. Thus, in our considered view, the amendment in Finance Act cited by Shri Nagesh Pathak, AR and Board Circular would not make any different in the facts and circumstances of the case. Moreover neither the show cause notice nor the impugned order in appeal mentions as to which common cenvat credit availed inputs have been used in manufacture of sugar molasses (dutiable final product) and bagasse (exempted final product). Since Bagasse emerges at sugarcane crushing stage, there is no possibility of any input-chemicals etc. having been used at that stage. Accordingly, we find merit in the contention of the appellant. The impugned order is set aside. The appeal and stay application are allowed."

5. Hon'ble Allahabad High Court vide judgement dated 18.05.2012 in the matter of **Balrampur Chini Mills and others vs. Union of India and others** has held that bagasse generated in the course of crushing of sugarcane is not excisable goods even after amendment to section 2(d) of the Central Excise Act, 1944 w.e.f.13.05.2008 by Finance Act, 2008. Since Bagasse is not excisable goods, the provisions to Rule 6 (2) and Rule 6(3) would not be applicable in respect of the same.

6. In view of this, Rule 6 (3) would not be applicable and as such amount under this rule would not be recoverable in respect of clearance of bagasse. The impugned orders are, therefore, not sustainable. The same are set aside.

7. The appeals well as the stay petitions are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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