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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/2477/2005-EX[DB] Dated: **29/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
U.P.STATE SUGAR CORPORATION LTD.
Sankoti Tanda Distt.Meerut-I U.P.

U.P.STATE SUGAR CORPORATION LTD. (Appellant)

VS

C.C.E.MEERUT-I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/742/2012-EX[DB]** dated **25/06/2012** 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.MEERUT-I
University Road Mangal Panday Nagar
Meerut-I,U.P.

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

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

DATE OF HEARING/DECISION : 25/06/2012.

Excise Appeal No. 2477 of 2005

M/s U.P. State Sugar Corporation Ltd. — Appellant

Versus

CCE, Meerut – I — Respondent

[Arising out of the Order-in-Original No. 07/Commissioner/M-I/ 2005 dated 19/05/2005 passed by The Commissioner, Central Excise, Meerut – I.]

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?	:

Appearance

Shri Mayank Garg, Advocate – for the Appellant.

Shri Nagesh Pathak, Authorized Representative (DR) – for the Respondent.

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

FINAL Oral Order No. A/742/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

Appellant M/s U.P. State Sugar Corporation Ltd., a state controlled manufacturing unit is engaged in manufacture of sugar with molasses as its by-product. Both sugar and molasses are excisable items.

2. On 14th July 2003 at about 9 p.m. one truck No. HR-29 A 7002 entered the premises for loading sugar and unfortunately it hit against the pipeline of storage tank of molasses. Consequently there was loss of molasses due to leakage amounting to 1667 qntl. of molasses.

3. The appellant vide letter dated 15th July 2003 reported the incident to the Department. On 13th September 2003, the appellant applied for remission of excise duty due to loss of molasses, under Rule 21 of the Central Excise Rules, 2002. The Jurisdictional Commissioner rejected the request for remission vide impugned order dated 19th May 2005. The ground for rejecting the request for remission is that the accident which resulted in loss of molasses was avoidable.

4. Feeling aggrieved by the rejection of the application of remission, the appellant has preferred this appeal.

5. We have heard the parties.

6. It is pleaded by Shri Mayank Garg, Advocate that the Commissioner has committed a grave error in rejecting the request for remission of excise duty on the ground that accident was avoidable. He submits that in every accident it can be said that due precaution it would be avoidable, and if such a restricted view of accident is taken, then Rule 21 of the Central Excise Rules, 2002 would become redundant. Thus, he has urged us to accept the appeal and allow the remission. In support of his contention, Shri Mayank Garg, Advocate has relied a judgment of Hon'ble Rajasthan High Court in the matter of **Union of India vs. Hindustan Zinc Ltd.** reported in **2009 (233) E.L.T. 61 (Raj.)**.

7. Shri Nagesh Pathak, DR, for the Department on the contrary has argued in support of the impugned order and reiterated the reasoning adopted by the Commissioner concerned.

8. It is undisputed that after the accident, was reported to the Department, the officials from the Commissionerate visited the factory of the appellant. There is nothing on the record that the excise team on inspection found some mischief or reported that the accident was not genuine. Thus, there is no dispute regarding the loss of molasses. As regards, the plea that the accident was avoidable it is sufficed to say that every accident is on account of lack of precaution on the part of the personal responsible for avoiding such incident. Nobody deliberately would indulge in an exercise which may result in huge loss. Therefore, we are of the

view that interpreting Rule 21 of the Central Excise Rules, the authorities are required to be liberal otherwise restrictive construction to Rule 21 would make it inoperable and redundant. In our aforesaid view, we are supported by the judgment of Hon'ble Rajasthan High Court in the matter of **Union of India vs. Hindustan Zinc Ltd.** (supra).

9. This is therefore a fit case in which the Commissioner ought to have allowed the remission of excise duty particularly when there is no evidence to show any malafide intention to evade the excise duty. Thus, we find it difficult to sustain the impugned order. Appeal is accepted. The impugned order is set aside and remission sought by the appellant is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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