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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/2/2006
Appeal No. : E/2135/2005-EX[DB]

Dated: **23/07/2012**

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

C.C.E.ALLAHABAD
38 M.G.Marg Allahabad U.P.

(Appellant)

C.C.E.ALLAHABAD

VS

KANORIA SUGAR & GENERAL MANUFACTURING CO LTD MANUFACTURING LTD.

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/833/2012-EX[DB]** dated **17/07/2012** 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. **<u>Respondent</u>**
KANORIA SUGAR & GENERAL MANUFACTURING CO LTD MANUFACTURING LTD.
C.Captainganj Distt Kushinagar U.P.

2. **<u>Advocate(s) / Consultant(s):</u>** SH. S. P. OJHA, ADV., 299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD

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.2, R.K.Puram, New Delhi.

COURT-I

Date of hearing/ decision: 17.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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?	

Excise Appeal No. 2135 of 2005 & C.O. No. 02 of 2006

(Arising out of Order-in-Original No. MP(Dem-13)/2004) 14 of 2004 dated 30.04.2004 passed by the Commissioner, Central Excise, Allahabad).

CCE, Allahabad — Appellants

Vs.

M/s Kanoria Sugar & General Mfg. Co. Ltd. — Respondent

Present Shri I. Baig, AR for the appellant.
None for the respondent.

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

FINAL Order No. A/833/2012-Ex(BR)

Per. Justice Ajit Bharihoke (Oral):

Department has preferred this appeal against the order of Commissioner, Central Excise allowing remission of excise duty amounting to Rs. 15,82,450/- to the respondent under Rule 21 of the Central Excise Rules, 2002 for the loss of

31649 qtls. of molasses stored in masonary tank due to auto-combustion on 25.04.2003. The loss was reported to the excise department on the same day. Local excise team visited the unit of the appellant for inspection and evaluation and they submitted a report confirming the loss of molasses due to auto-combustion. It was also stated in the report that there was provision of cooling the pipeline and two pumps were installed in masonary tank for recirculation of molasses stored therein.

2. Respondent has not turned up despite of the fact that the notice was sent him at the correct address. Therefore, we are constrained to hear the appeal in his absence.

3. The Commissioner concerned on consideration of the report and the submissions of the respondent assessee came to the conclusion that the molasses got burnt due to auto-combustion without any negligence on the part of the respondent. Accordingly, vide impugned order he allowed duty remission of Rs.15,82,450/-.

4. Sh. I. Baig, ld. AR for the appellant has pleaded that impugned order is not sustainable for the reason that remission has been granted ignoring the provision of Rule 21 of Central Excise Rules, 2002 which provides for remission of duty in case of loss or destruction of excisable goods by natural cause or unavoidable accident. He submits that this is a case of auto-combustion which could have been avoided by the respondent by having a proper cooling system to cool the pipeline as also the storage tank but the respondent has not cared to ensure proper cooling arrangement which resulted in auto-combustion and loss of molasses.

Accordingly, the remission of duty under Rule 21 is not called for. Thus, he has urged us to accept the appeal and set aside the impugned order.

5. We have considered the submissions made by ld. AR. It is undisputed that 3164.900 MT of molasses stored in the molasses tank got burnt and become unfit for distillation and marketing due to auto-combustion. It is not the case of the department that the quantity of molasses lost in fire claimed by the assessee is incorrect or that molasses were removed from the factory clandestinely. Only ground in appeal is that the accident of burning could have been avoided by taking adequate precaution. In this regard, we may note that there is nothing in the report of the State Excise office who visited the site for inspection which may suggest that the respondent was negligent or he failed to take steps to ensure cooling of the pipeline leading to the molasses tank and also recirculation of the molasses within the tank. Instead the report suggests that there was a provision for cooling of pipe line from the Mill to the, storage tank and two pumps were installed for recirculation of the contents of storage tank. Report also says that auto combustion took place because of abnormal rise in temperature of molasses. From this report it cannot be concluded that the respondent was grossly negligent in maintenance of storage tank. Accordingly, we find no reason to fault the order of Commissioner granting remission of duty on the ground that the molasses has burnt due to unavoidable auto combustion accident.

6. In view of the above, we do not find any merit in the appeal. Accordingly appeal as well as C.O. are dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)