General Manager, Kisan Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-2006

Reported in : (2006)(111)ECC204

Judge : M Ravindran

Appellant : General Manager, Kisan

Respondent : Cce

Judgement :

1. This appeal is directed against order in appeal dated 12/07/04 which upheld the order of confiscation and penalty on the appellants.

2. The relevant fact that arises for consideration are the appellant is manufacturer of sugar and molasses. Physical stock checking of the appellant's factory was conducted on 10/10/98 and which date the authorities found the excess stock of 4488.05 qtls. of molasses as compared to the book stock. Show cause notice was issued to the appellant for confiscation of the seized goods, which on adjudication was confiscated, and penalty imposed on the appellant. The appellant's appeal was rejected by the Commissioner (Appeals). Hence this appeal.

3. Learned Representative appearing for the appellant submits that the stock verification done by the authorities was by dip reading method and it was not a correct method. It is his submission, that right from the beginning they are submitting that the manufacturing and clearances of their product molasses are

done by actual waivement. It is his submission that the issue has arisen in this case due to the inherent nature of the finished product due to which there is always excess due to foaming or shortage due to evaporation during the storage.Bajaj Hindustan Ltd. v. Collector of Central Excise Kanpur as reported as for the proposition that allowance for foaming during the storage of molasses has to be given.

4. The learned DR on the other hand submits that the appellant has been maintaining record of the molasses based on the dip reading method and hence he cannot now say that the dip reading method is not correct.

5. Considered submissions made at length by both sides and perused records. It is undisputed that the excess stock of the molasses as found by the authorities on the day of physical verification was in respect of the stock lying in two tanks. I also find from record that the appellants have been disputing the dip reading method from the date of stocktaking. As explained by the learned representative, I find that the excess stock as found is 10.5% of the stocks recorded in the books i.e. quantity of goods found excess by the authorities is around 10% of the book stock. I find that identical issue came up before the Division Bench in the case of Bajaj Hindustan Ltd. (Supra), wherein the Tribunal held as under: Heard both sides. ISI specifications clearly indicate that 10% allowance is always given for foaming during storage of molasses. It is also admitted by SDR that excess noticed is within 10%. Since the fact of foaming has not been disputed and it is also a fact that during foaming dip reading measurement could not indicate exact weight. We find considerable force in the contentions of the appellants. We, therefore, set aside the impugned order and allow the appeal.

6. The issue involved in the case before me is squarely covered by the decision of the Division Bench and I find that the percentage of excess noticed in this case is just about 10% of the book stock.

7. Since, the fact of foaming has not been disputed in the present case and is also an admitted fact that molasses are prone for foaming during the storage, the ratio of the decision in the Bajaj Hindustan Ltd.'s case is squarely applicable in this case.

8. Accordingly, respectfully following the ratio of the decision of the Division Bench, I set aside the impugned order and allow the appeal of the appellants.