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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-28-2007

**Reported in :** (2007)(116)ECC562

**Judge :** P Das

**Appellant :** Kothari Products Ltd.

**Respondent :** C.C.E.

**Judgement :**

1. The relevant facts of the case are that the appellants are engaged in the manufacture of Pan Parag Gutkha and they are liable to pay duty under Central Excise Act. The Food Inspector seized 203 cases of Gutkha under the Prevention of Food Adulteration Act in May'98 alleging violation of the provisions of the said Act. The learned Judicial Magistrate First Class vide order dt. 31.7.03 ordered for destruction of the said goods as the goods were smelling bad and not fit for human consumption. As such the appellant by its letter dt. 6.8.03 requested the Commissioner of Central Excise for remission of duty of Rs. 5,06,688/- on stock of Pan Parag Gold Gutkha 203 cases. By order dt.

2.11.04, the Commissioner of Central Excise rejected the application dt. 6.8.03 for remission of Central Excise Duty. Hence the appellant filed the present appeal.

2. Ld. Counsel on behalf of the appellant submits that the Commissioner accepted that the goods become unfit for marketing or for consumption and therefore, the

appellant is entitled for remission of duty under Rule 21 of Central Excise Rules, 2002. He further submits that the Commissioner rejected the remission of duty on the ground that the appellant failed to make their case that the said goods have become inedible or unmarketable due to unintended reasons beyond their control. According to the Ld. Advocate, such findings are beyond the scope of Rule 21 of the said Rules. In this connection, he relied upon the following case laws: Bihar State Sugar Corporation Ltd. v. CCE, Patna 2002(149) ELT.530 (Tri.-Kolkata) Basti Sugar Mills Co. Ltd. v. CCE, Allahabad 2001(133) ELT.95 (Tri.-Delhi) U.P. State Sugar Corporation Ltd. v. CCE, Allahabad 2001(138) ELT.1196 (Tri.-Delhi) Bihar State Sugar Corporation Ltd. v. CCE, Patna 2006(194) ELT.42 (Tri.-Kolkata) 3. Ld. DR reiterated the findings of the Commissioner of Central Excise.

4. After hearing both the sides and on perusal of the record, the relevant portion of Rule 21 of Central Excise Rules, 2002 is reproduced below: Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing.

5. On plain reading of the Rule, it is clear that remission of duty is permissible subject to the satisfaction of the Commissioner that the goods have been lost or destroyed by natural causes or by unavoidable accident or unfit for human consumption or for marketing at any time before removal. Thus, Rule 21 placed limitation the satisfaction of Commissioner for granting permission for remission of duty. In this case, the Ld. Judicial Magistrate First Class held that the seized goods are unfit for human consumption and ordered that the seized goods be destroyed. It is revealed from the impugned order that the Commissioner is also satisfied that the goods are unfit for consumption or for marketing. But he denied the remission of duty on the ground that the appellant failed to make their case that the goods are unfit for consumption due to unintended reasons beyond their control. In my view when the Commissioner is satisfied that the goods are unfit for consumption or for marketing, then there is no scope to reject the remission of duty. The Commissioner having satisfied that the goods are unfit for consumption

or for marketing and thereafter rejection of application on the above ground is extraneous and beyond the scope of Rule. The Tribunal in the case of Basti Sugar Mills Co. Ltd. v. CCE, Allahabad Since the Commissioner has admitted that the molasses had deteriorated rendering it unfit for marketing and such deterioration had taken place on account of non-lifting of the same by the distilleries; in the light of the legal provisions cited above, I am of the view that the appellants have made out a complete case in their favour for remission of duty on the molasses in question and there is no warrant to demand duty on such quantity of molasses.

Consequently, I allow the appeal by setting aside the order passed by the Commissioner. The cross objections filed by the Revenue are also disposed of in the same terms. U.P. State Sugar Corporation Ltd. v. Commissioner of Central Excise, Allahabad 2001(138) ELT. 1196 (Tri.Del.), the Commissioner rejected the request for remission of duty to the party on the ground that they stored more molasses in the masonry tank than the storage capacity and they did not take ample and sufficient steps for cooling down the temperature when it was rising. But, the Tribunal allowed remission of duty as molasses unfit for consumption or marketing. Similarly, in the present case, the Commissioner observed that the goods were seized due to their faults and decayed pending litigation in the Court, and such goods do not deserve remission of duty. On perusal of the order of the Ld. Judicial Magistrate 1st Class, there is no finding that the goods were seized due to the appellants' fault and therefore, such finding of the Commissioner is not sustainable. At any event, the litigant cannot only be blamed for pending litigation before the authority, in other words, they are the sufferers.

6. As such, I am of the view that it is a fit case for remission of duty and the impugned order is set aside and the appeal is allowed with consequential relief.

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