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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-19-2007

Reported in : (2007)(118)ECC499

Judge : P Das

Appellant : Commissioner of Central Excise

Respondent : K.M. Sugar Mills Ltd.

Judgement :

1. The issue involved in these appeals is whether payment under Rule 57CC and 57AD of erstwhile Central Excise Rules, 1944 are applicable in respect of clearance of bagasse.

2. The learned DR on behalf of the Revenue, submits that the Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Kicha Sugar Co. Ltd. v. Commissioner of Central Excise, Meerut, Final order No. 551-554/03 dated 22.7.03. He submits that the Hon'ble Supreme Court dismissed the Department's appeal summarily, which cannot held to be affirmation of Tribunal's view being non reasoned, non-speaking.

3. Heard both sides and perused he records. The relevant portion of the finding of the Commissioner (Appeals) is reproduced below: The Central Board of Excise & Customs vide their letter F.No. 384/65/2003-JC dated 9.7.2004 addressed to the CCE, Meerut II, forwarding there under the Judgment of Hon'ble Supreme Court in

Civil Appeal No. D 27628/2003 of 2004, in the said case has intimated that Hon'ble Supreme Court has dismissed the appeal filed by the revenue and that the department was not going to review the order passed by Hon'ble Supreme Court. As such the order of CEGAT in the case of Kichha Sugar Co. Ltd. has attained finality and the demands on this count against bagasse was not sustainable. Since the demand itself was not maintainable I do not want to go into the merit of other plea raised by the appellant like bar of limitation and absence of machinery of recovery etc.Basti Sugar Mills Co. Ltd. v. CCE, Allahabad, Final order No. A/271-72/05 and S/-245-46/05 dated 28.2.05, held as under: 3. The only issue raised in these appeals is whether payment under Rule 57CC is called for in view of the clearance of 'Bagasse' from the sugar mill without payment of duty. Learned Counsel for the appellant has submitted that this issue remains decided in favour of the assessee by the decision of the Tribunal in the case of Rudra Bilas Kisan Sahakari Chini Mill Ltd. v. CCE, Meerut and Final Order No. 551-554/03-B dated 22.07.2003.

Learned Counsel has also brought to my notice a copy of the letter F.No. 384/65/2003 JC dated 9^th July, 2004 of the Department of Revenue which states that the appeal filed in the Supreme Court against Order No. 551-554/03-B dated 22.07.2003 has been dismissed by the Hon'ble Supreme Court.

4. In the above order of the Tribunal has held that no payment under Rule 57CC is required in respect of 'Bagasse'. Thus, the demand raised are not sustainable and they are required to be set aside.

The impugned orders is set aside and appeals are allowed with consequential relief, if any, to the appellants.

5. In view of the above, I do not find any reason to interfere with the impugned order.

6. Both the appeals are rejected. Cross objection is also disposed of accordingly.

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