

Monnet Industries Limited Vs. Cc and Ce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-13-2007

Judge : R Abchandani

Appellant : Monnet Industries Limited

Respondent : Cc and Ce

Judgement :

1. The appellant has challenged the order of the Commissioner made on 25.7.2005 rejecting the remission claims of the appellant in respect of 387 qtls. of molasses of the season 2003-2004.

2. The appellant was engaged in the manufacture of sugar and molasses and had made remission applications dated 06.11.2004 for 146.50 qtls.

and 16.12.04 for 240.50 qtls. of molasses. According to the appellant, the total shortage of molasses, which came to 387 qtls., was only 0.17% of the total quantity of 227888 qtls. of molasses produced in the season of 2003-2004. Since the storage loss was less than 2%, the appellant claimed benefit of circular dated 18.07.2003, which condoned the storage losses of molasses upto 2%.

3. The learned Counsel appearing for the appellant placed reliance on the decision of this Tribunal in the case of Ramala Sehkar Chinni Mills Ltd. v. CCE, Meerut-I reported in 2007 (213) ELT 361, in which identical issue was decided in favour of the assessee.

4. The learned authorized representative (DR) for the department supported the reasoning and findings contained in the impugned order.
5. After hearing both sides and on going through the record, it appears that the shortage found was less than 2% of the total quantity of molasses produced in the season. The shortage is worked out on the basis of the material on record at 0.17%. The Commissioner has rejected the remission claim on the ground that, the appellant had not taken adequate precaution to safeguard the goods. He observed that, the did not show that the loss that occurred was unavoidable and was not caused due to their carelessness. He further relied upon the Trade Notice No.206/84 dated 01.12.1984 of the Meerut Commissionerate for holding that, there was failure on the part of the appellant to comply with the procedure/conditions laid down therein.
6. Both the above grounds given by the Commissioner for rejecting the appellant's claim were negatived by the Tribunal by its decision, in the case of Ramala Sehkar Chini Mills Ltd. v. CCE, Meerut-I, reported in 2007 (213) ELT 361, against the Revenue. The reliance by the Commissioner on the Trade Notice dated 01.12.1984 was held to be misconceived for the following reasons : The Trade Notice No. 206/84 dated 01.12.1984, was issued by the North U.P. Collectorate, Meerut, in the context of Rule 49 of the Rules of 1944, provided in paragraph 3 thereof that, in order to avail of the provisions of the remission of duty, the procedure indicated therein should be followed. As per that procedure, the first information regarding loss or destruction of excisable goods by natural causes or accident such as flood, cyclone, fire etc. was to be sent within 24 hours of the occurrence of the accident to the Range Superintendent concerned. It was indicated that any delay in furnishing this information by the owner of the goods may result in refusal to write-off duty on such losses. It is obvious that any such procedural requirement of informing the Collectorate about the accident resulting in loss/destruction of goods within 24 hours would have been issued for administrative convenience and was relatable to the occurrences at a point of time from which the period of 24 hours could be computed. This is clear from the nature of causes mentioned in the Trade Notice namely, flood, cyclone, fire which would be causes from the point of occurrence of which 24 hours could be computed. In

the losses such as, due to seepage, evaporation or other such causes in the stored goods. It may not be possible to detect the loss at the time when it occurred as it may be possible in cases of losses due to flood, fire etc. Moreover, such a procedural requirement provided by a Trade Notice cannot override or delimit the operation of the statutory rules. Rule 21 of the said rules does not prescribe such narrow time limit for intimation of the losses.

7. The Tribunal also held that, when storage loss of molasses was undisputedly within the permissible limit of condonable 2%, there was no reason for the Commissioner for not giving the benefit of the Circular dated 18th July, 1983 issued by the Board, which specifically applied to storage of molasses in steel tanks. In this context, the Tribunal held, in paragraph 7.2 of the judgment, as under : The Circular letter F.No. 261/15/82/CX-8 dated 18th July, 1983 issued by the Board on condonable losses of molasses, in terms, provided that the instructions permitting condonable loss upto 2% was confined to storage losses observed in steel tanks/pakka pits.

An identical issue that arose before the Tribunal in J.K. Sugar Limited v. CCE, Meerut-II, decided in favour of the applicant by holding, in the context of Rule 21 that, though Rule 21 did not specifically mention 'handling' the reference in the rule to "unavoidable accident at any time before removal" would cover handling losses also. Therefore, the losses that had occurred due to storage as well as due to leakage while transferring the molasses to the tankers for transport within the premises which would be "handling" losses, were both covered for the purpose of deciding the remission of duty upto the condonable limit of 2% as envisaged in the Circular letter of the Board. *Seksaria Biswan Sugar Factory (P) Ltd. v. Commissioner of Central Excise, Lucknow*, held in paragraph 6 of the judgment that, Board had given clear cut direction to all field formations that storage loss upto 2% should be condoned. It was observed that, the Tribunal, in various decisions, has been consistently taking the view that the storage losses upto 2% should be condoned.

9. The impugned order is, therefore, set-aside and the remission claims of the appellant are allowed with consequential relief.

