

2013 (4) ECS (60) (Tri – Del)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST BLOCK NO. 2, R. K. PURAM, NEW DELHI – 110066  
Principal Bench, New Delhi.  
COURT NO. III**

Date of Hearing : 04/10/2013

**M/s D.S.M Sugars (Now Kashipur Sugar Mills Ltd.)**

**Vs.**

**CCE, Meerut - II.**

**Excise Misc Application No. 10/2012, 395/2009 and 59924/2013 in Appeal No. 1365  
of 2008**

[Arising out of the Order – in – Original No. 3-4/Commr/Meerut – II/2008, dated 31.03.2008 passed by the Commissioner, Central Excise – II, Meerut.]

Appearance

Shri Rajesh Kumar, Advocate

- for the Appellant

Shri Pramod Kumar, Commissioner (AR)

- for the Respondent

CORAM

**Hon'ble Ms. Archana Wadhwa, Member (Judicial)**

**Hon'ble Shri Rakesh Kumar, Member (Technical)**

FINAL Order No. 58030 – 58036/2013 dated 4.10.2013

**“In this case, from the order of Hon'ble Allahabad High Court, it is clear that the appellant company is being wound up and official liquidator has been appointed. But, since no application for continuance of the proceedings has been received from the official liquidator in accordance with the Rule 22 of the CESTAT Procedure Rules, all these appeals, stay applications and miscellaneous applications filed by the appellant company – M/s DSM Sugar shall be treated as abated in terms of Rule 22 of the CESTAT Procedure Rules.” [Para 9]**

**Per Rakesh Kumar, Mr. :**

1. These appeals alongwith stay applications have been filed against six orders passed by the Commissioner, Central Excise, Meerut – II and one order passed by CCE (Appeals), Meerut – II upholding the duty demands against the Appellant Company, the details of which are given below.

S.No.	Appeal No. alongwith Stay application No. and Misc. Application No.	Order – In – Original/Order – In – Appeal No.	Duty and penalty (Rs.)
1.	E/1365/2008 alongwith Stay Application No. E/S/1322/2008 and Misc. Application nos. 10/2012,395/09 &59904/2013	3 – 4/Comm/M-II/08	6,71,12,020/- with interest under Section 11 AB and equal amount of penalty under Section 11 AC.
2.	E/1366/2008 alongwith Stay Application No. E/S/1323/2008 and Misc. Application No. 396/2009	7/Comm/M-II/08	3,09,51,466 with interest under Section 11 AB and equal amount of penalty under Section 11 AC.
3	E/1367/2008 alongwith Stay Application No. E/S/1324/2008 and Misc. Application No. 397/2009	8/Comm/M-II/08	4,75,25,575 with interest under Section 11 AB and equal amount of penalty under Section 11 AC.
4.	E/1982/2008 alongwith Stay Application No. E/S/1941/2008 and Misc. Application No. 32 & 73/2009	10/Comm/M-II/08	4,55,89,161/- with interest under Section 11 AB and equal amount of penalty under Section 11 AC.
5.	E/313/2010 alongwith Stay Application No. E/S/322/2010	36-37/Comm/M-II/08	Duty Rs. 7,66,78,495/- with equal amount of penalty under Section 11 AC.
6.	E/976/2011 alongwith Stay Application No. E/S/1195/2011	15/Comm/M-II/08	2,53,68,585/- with interest under Section 11 AB and equal amount of

			penalty under Section 11 AC.
7.	E/2944/2012 alongwith Stay Application No. E/S/3691/2012	138-140-CE/M-II/2012 CCE (A)	4,91,488/- with interest under Section 11 AB and equal amount of penalty under Section 11 AC.

Appeal No. E/1039/11, E/1138/11, E/2945/12 and E/2946/12 alongwith stay applications have been filed by Shri S.K. Bhatnagar and Shri R.K. Agarwal, employees of the appellant company challenging imposition of penalty on them.

- 1.1. In respect of appeal No. E/1365 – 1367/2008 and E/1982/2008, the Tribunal vide stay order No. 1082 – 1084/2008 dated 24/09/2008 and No. 1260/08 – EX dated 10/11/08, respectively had directed the pre – deposit of 50% of the duty demand. The appellant, however, challenged the orders before Hon’ble Uttrakhand High Court and Hon’ble High Court vide order dated 20.01.09 had remanded the matter to the Tribunal for denovo decision on the said application, keeping in view the fact that the company is under BIFR. The other stay applications are listed for hearing for the first time. The miscellaneous applications have been filed for admission of addition evidence, modification of the stay order and early hearing.
2. Today Shri Rajesh Kumar, Advocate, appeared for hearing. He, however, stated that since on the recommendations of the order dated 8<sup>th</sup> May, 2013 of BIFR for winding of the appellant company, Hon’ble Allahabad High Court vide judgment dated 9.9.13, has ordered liquidation of this company and has directed the official liquidator take physical possession of the assets and properties of the company, he no longer represents the appellant company. He, accordingly, pleaded that appropriate orders may be passed by the Tribunal in respect of these appeals, stay applications and miscellaneous applications.
3. The learned Commissioner (AR), Shri Pramod Kumar, drawing our attention to the provisions of Rule 22 of CESTAT Procedure Rules, pleaded that since the appellant company is in the process of being wound up, in accordance with the provisions of this Rule, all the appeals and stay applications and miscellaneous applications may be treated as abated, as no application has been received from the official liquidator for continuance of the proceedings.
4. We have considered the submissions from both the sides and perused the records.

5. Para 12.5 of the BIFR order dated 8/5/13 is reproduced below :-

“After considering the material on record and submissions made in today’s hearing, the Bench came to the conclusion that despite having allowed enough time and opportunity to all concerned, it had not been possible to formulate any acceptable revival scheme for the company that could enable to make its net worth exceed the accumulated losses within a reasonable time, while meeting all its due financial obligations and that the company, as a result thereof, was not likely to become able in future and that it was just, equitable and in public interest that the company M/s Kasipur Sugar Ltd. should be wound up u/s 20 (1) of SICA. The Bench, therefore, confirmed its earlier prima facie opinion formed on 11.02.2013 to wind up the company in terms of Section 20 (1) of SICA. It also directs that this opinion be forwarded to the concerned High Court (Allahabad High Court) alongwith copies of all the earlier orders/proceedings in the case for further necessary action according to law”.

6. From the above BIFR order, it is clear that BIFR has recommended for winding of the appellant company.
7. On the basis of the above order of BIFR, Hon’ble Allahabad High Court has directed for liquidation of the appellant company and has ordered that the official liquidator may take official possession of the assets and properties of the appellant company. The order dated 9.9.13 of Hon’ble Allahabad High Court is reproduced below: -

“The Board for industrial and Financial Reconstruction under Section 16 of the Sick Industrial Company (Special Provisions) Act, 1985 (hereinafter referred to as ‘SICA’) has found it proper to wind up M/s Kashipur Sugar Mills Limited under Section 20 (1) of SICA. The order of BIFR has been forwarded to the Company Court for further necessary action in accordance with law.

On behalf of Kashipur Sugar Mills Limited Sri Rohit Agrawal, Advocate is present and it is stated on behalf of the company that no appeal against said order has been filed before the AIFR nor any other appeal is pending.

On behalf of the company it is further stated that the company has no objection if the orders are passed for winding up in terms of the directions of the BIFR.

In view of the aforesaid as also in view of the facts as found recorded in the order of the BIFR dated 8<sup>th</sup> May, 2013 it is directed that M/s Kashipur Sugar Mills Limited be wound up.

Let Official Liquidator take physical possession of the assets and the properties of the company.

The Ex. Directors of the company submit the statement of affairs of the Company within four weeks”.

8. Rule 22 of the CESTAT Procedure Rule is as under : -

“RULE 22. Continuance of proceedings after death or adjudication as an In-solvent of a party to the appeal or application:-

Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be:

Provided that every such application shall be made within a period of sixty days of the occurrence of the event:

Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit”.

9. From the above Rule, it is clear that when an appeal or an application is filed by a company and same is being wound up, the appeal or application shall abate unless an application is made for continuance of such proceedings by or against the successor in interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be. In this case, from the order of Hon’ble Allahabad High Court, it is clear that the appellant company is being wound up and official liquidator has been appointed. But, since no application for continuance of the proceedings has been received from the official liquidator in accordance with the Rule 22 of the CESTAT Procedure Rules, all these appeals, stay applications and miscellaneous applications filed by the appellant company – M/s DSM Sugar shall be treated as abated in terms of Rule 22 of the CESTAT Procedure Rules.

The department can present its claim of Revenue against the appellant before the official liquidator and the official liquidator, is also at liberty to file applications before this Tribunal for restoration of the appeals and stay applications and their continuance.

10. As regards the appeals alongwith stay applications filed by Shri R. K. Agarwal and Shri S. K. Bhatnagar, employees of the appellant company, the same shall be listed separately for disposal.

(Dictated in the open court.)