

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

EXCISE APPEAL No.40698 OF 2014

(Arising out of Order-in-Original No.LTUC/14/2014-C dated 07.02.2014 passed by Commissioner of Customs, Larger Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101)

M/s. EID Parry (India) Ltd.

... Appellant

Sugar Factory
Nellikuppam.

Versus

The Commissioner of GST & Central Excise,

...Respondent

Chennai Outer Commissionerate,
No.2054, I Block No. II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Sri M. N. Bharathi, Advocate
For the Appellant

Sri R. Rajaraman, Assistant Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 12.09.2023
DATE OF DECISION : 12.09.2023**

FINAL ORDER No.40794/2023

ORDER :

Brief facts are that the appellant is engaged in the manufacture of Sugar, Molasses and Denatured Ethyl Alcohol falling

under Tariff Items 1701.11.90, 1703.10.00 and 2207.2000 respectively. They cleared Sugar, Molasses and Denatured Ethyl Alcohol on payment of duty. However, Molasses was also captively consumed within the factory for the production of DNA and Rectified Spirit, which is un-denatured Ethyl Alcohol of concentration of about 95%. In respect of molasses so captively consumed, the appellant was availing exemption under notification No.67/95-CE dt. 16.03.1995 as amended. As per the said notification it exempts from payment of duty on 'inputs'/capital goods used in the manufacture of final products as long as the final product is not exempt from duty or are not chargeable to nil rate of duty. According to department, the Rectified Spirit manufactured using the captively consumed molasses was not excisable goods and does not come within the definition of 'finished product'. Therefore, the exemption availed under notification 67/95 in respect of molasses used for production of Rectified Spirit is incorrect. SCN was issued proposing to demand duty on the quantity of molasses captively used in production of rectified spirit from July 2012 to March 2013. After due process of law, the original authority confirmed the demand, interest and imposed penalties. Aggrieved, the appellant is before the Tribunal.

2. Learned counsel Sri M.N. Bharathi appeared for the appellant and submitted that the very same came up for consideration before the Tribunal and vide Final Order No.40612 dt. 26.07.2023, the

Tribunal set aside the demand and allowed the appeal. He prayed that following the same decision, the appeal may be allowed.

3. Ld. A.R Sri R. Rajaraman appeared for the Department and supported the findings in the impugned order.

4. Heard both sides. The Tribunal in the case of *Shree Ambika Sugars Ltd.* F.O. No.40789-40799/2014 dt. 20.11.2014 reported in 2016 (343) ELT 462 (Tri.-Chennai) held that the denial of exemption notification 67/95 on molasses captively consumed to manufacture Rectified Spirit & DNA cannot be justified. In the appellant's own case in recent decision the Tribunal followed the same wherein it was held as under :

"14. The very same issue was considered in the appellant's own case along with the cases of *Rajashree Sugars and Chemicals Ltd., Dharani Sugars & Chemicals Ltd., Shree Ambika Sugars Ltd.* The Tribunal vide Final Order No.40789-40799/2014 dt. 20.11.2014 reported in 2016 (343) ELT 462 (Tri.-Chennai) held that the denial of Exemption Notification No.67/95-CE on molasses captively consumed to manufacture Rectified Spirit and Extra Neutral Alcohol (ENA) cannot be justified. Accordingly, denial of credit on molasses was also set aside. The said decision was upheld by the Apex Court as reported in 2022 (379) ELT 556 (SC). Relevant part of the said final order of the Tribunal is noteworthy and reproduced as under :

"8.3 We find that the present dispute is emerged due to restructuring of the Tariff from 6 digit to 8 digit. CBEC vide Circular No. 808/5/2005-CX, dated 25-2-2005 regarding implementation of Tariff from 6 Digit to 8 Digit, clarified as under :-

"Implementation of the Central Excise Tariff (Amendment) Act, 2004 (8- Digit Classification Code) - Clarification regarding.

I am directed to draw your attention to this Department's Notification No.6/2005-C.E. (N.T.), dated 24-2-2005, issued from F.No.4/3/2002-CX.I (Part-II), which notifies that the Central Excise Tariff (Amendment) Act, 2004 will come into force with effect from 28th February 2005. The said Act is being uploaded on the CBEC website, (www.cbec.gov.in).

2. Accordingly, all the field officers must ensure implementation of the amended Tariff Act (including 8-digit classification code in its new 1st & 2nd Schedules) from 28-2-2005. Trade should also be suitably informed immediately and guided in the matter so that the transition from 6-digit to 8-digit classification code is smooth without any difficulty to the trade in day-to-day clearances.

3. Notification No. 3/2005-C.E., dated 24th February 2005 has been issued to preserve the existing duty rates on specified commodities where effective rates were built into the six-digit tariff, but are now subject to different tariff rates in the 8-digit code. This is subject to any subsequent changes.”

8.4 In the present case, there is no dispute that prior to 28-2-2005, Rectified Spirit and ENA manufactured by the appellant were covered under sub-heading No. 2204.90, NIL rate of duty. After amendment of Tariff (8 Digit Classification Code), Heading 22.04 would correspond to Heading No. 22.07. In the above Board Circular, it has been clarified that Notification No. 3/2005-C.E., dated 24-2-2005 was issued to preserve the existing duty rate. So, it is clearly evident that the Rectified Spirit existing NIL rate of duty under sub-heading No. 2204.90 has been covered under Serial No. 14 of the Table appended to Notification 3/2005-C.E. (supra). In view of the above Board Circular, we find merit in the submission of the learned Advocate that with effect from 28-2-2005, Rectified Spirit and ENA are exempted goods, covered under Notification No. 3/2005-C.E. The Hon'ble Allahabad High Court in the case of *Gularia Chini Mills v. Union of India* - [2014 \(34\) S.T.R. 175](#) (All.) while dealing with bagasse, which emerged as a residue of sugarcane used as fuel in factory for manufacture of final product would be treated as exempted goods in the context of restructuring of Tariff of 6 digit to 8 digit, observed as under :-

“30. It is relevant to mention here that a notification, bearing No. 7/2005-Central Excise (N.T.) was published in Part II, Section 3, sub-section (I) of the Gazette of India, Extraordinary, dated 24-2-2005, which reads as under :

“In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules to amend all the rules made under the said section and all the notifications issued under the said rules and for the time being in force on the date of commencement of the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), except as respects things done or omitted to be done before such amendments, namely:-

1.(1) These rules may be called the Central Excise (Removal of Difficulties) Rules, 2005.

(2) They shall come into force on the date of the commencement of the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005).

2. In each of the rules made under Section 37 of the Central Excise Act, 1944 (1 of 1944), and in each of the notifications issued under these rules, for any reference to the Chapter, heading or sub-heading of the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as the case may be, relating to any goods or class of goods,

wherever referred to in the said rules or notifications, the corresponding reference to the Chapter, heading or sub-heading or tariff item, of the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005) shall be deemed to have been substituted.

No. 4/3/2002-CX.I (Pt.II)

Abhay Kumar Srivastav

Deputy Secretary to the Government of
India

Note : This notification intends to take care of the technical changes adopted in the numbering scheme for Central Excise classification through the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005). These amendments do not involve any substantive changes in the existing rules, so the particulars of each rule have not been indicated.”

Furthermore, during debate in Lok Sabha on the said Central Excise Tariff (Amendment) Bill, 2004, the then Hon’ble Minister of Finance in regard to the purpose of introduction of eight digit classification has stated that “the purpose of the Bill is very limited. On the custom side, we already have an eight-digit classification. It is, therefore, necessary that on the Excise side also we have the same eight digit classification. What we have found is that eight digit classification helps both trade and revenue department to identify a particular product and heading under which it falls. Immediately, the number of disputes comes down very sharply....”.

31. A perusal of the ‘Note’ appended below the Notification dated 24-2-2005 as well as the statement made by the Hon’ble Finance Minister in Parliament, as referred to above, clearly establishes that the notification has taken care of the technical changes adopted in the numbering scheme of 6 digits Central Excise classification, which has been aligned with the Customs Tariff of 8 digits with effect from 28-2-2005.

32. The definition of ‘excisable goods’ given in Section 2(d) means the goods, which are specified in the First or Second Schedule and which are subjected to duty of excise, can only be treated as excisable goods. A proposition has also been accepted by the Commissioner in its findings. A perusal of Section 2(d) of Central Excise Act shows that the excisable goods are only those goods which are subjected to duty of excise as specified in the First Schedule or Second Schedule of the Central Excise Tariff Act. Since Column of rate of duty is blank, therefore, in view of Section 2 of the Central Excise Tariff Act, 1985, electrical energy is not being subjected to excise duty for the purposes of being excisable goods under Section 2(d) of the Central Excise Act. Furthermore, Rule 6 of the 2004 Rules, which is applicable only to excisable goods, can alone be treated as exempted goods

for the purposes of Rule 6(3) of 2004 Rules, does not apply to electrical energy.”

... ..

8.9 The learned AR for Revenue relied upon the decision of the Hon'ble Bombay High Court in the case of *Niphad Sakhar Karkhana Ltd. v. CCE - 2014 (300) E.L.T. 66* (Bom.). In that case, the assessee filed appeal along with stay application before the Tribunal. By stay order, the Tribunal directed the assessee to pre-deposit a sum of Rs. One crore out of Rs. 1.14 crores in accordance with the provisions of Section 35F of the Central Excise Act, 1944. The Hon'ble High Court directed the Tribunal to decide the stay application afresh considering the decisions to take *prima facie* view whether they are applicable to the facts of the impugned case before directing pre-deposit. The learned AR also relied upon the decision of the Tribunal in the *Ugar Sugar Works Ltd.* (supra), which we have already discussed above. In the case of *Kothari Sugars & Chemicals Ltd. v. CCE - 2010 (262) E.L.T. 545*, the Tribunal remanded the matter. In the case of *Venkateshwara Winery & Distillery Ltd. v. CCE - 2013 (295) E.L.T. 306*, the Tribunal granted stay. In our considered view, none of the case laws relied upon by the learned AR are applicable in the facts and law of the case.

8.10 The learned AR referred Rule 48 of Tamilnadu Distillery Rules, 1985, Govt. of Tamilnadu, to establish that Rectified spirit is fit for human consumption. We find that the adjudicating authority accepted prior to 1-3-2005 Rectified Spirit covers under sub-heading No. 22.04 which is not fit for consumption and we are unable to accept the submission of the learned AR. It is noted that as regards Entry 84, List I, Seventh Schedule to the Constitution and other entries relating to alcohol it was only after the decision of the Hon'ble Supreme Court in the case of *Synthetics and Chemicals* [1990 (1) SCC 109] on 25-10-1989 holding that industrial alcohol was outside the legislative competence of State Legislature, the constitutional position relating to excisability for purposes of Central Excise became clear. Tamilnadu Prohibition and Excise Manual, Govt. of Tamil Nadu stated that levy of Excise Duty and Vend Fee on Industrial Alcohol has been withdrawn by the Government by order No. MS No. 167 Home, Prohibition and Excise (III) Department dated 3rd February 1990 effective 25-10-1989, the date of order of Supreme Court in W.P. No. 18, etc., of 1980 holding that the State Government could not invoke Entry 8 - List II, to levy Excise Duty and Vend Fee and the powers of State Government under "Entry 8-List II is limited to regulating and the prevention of conversion of alcoholic liquors for industrial use to one for human consumption and hence presently no levy is in operation. The Government, consequent on the withdrawal on Excise Duty and Vend Fee, have by order, MS. No. 662 Home, Prohibition and Excise III Department dated 4-9-1992 prescribed the collection of an Administrative Service Fee of Rs. 0.50 paise per bulk litre of spirit produced in the distillery before the spirit is issued from the distillery, to cover the service charges including expenditure on staff. The statements as referred by the learned AR are in this context.

8.11 The learned AR submits that the Table of the Notification No. 67/95-C.E. referred the Cenvat Credit Rules, 2001 and not Rules, 2004. In this case, we find that the adjudicating authority accepted that prior to 1-3-2005,

the appellants are eligible for the benefit of exemption Notification No. 67/95 and therefore, the submission of the learned AR for the Revenue has no merit. Apart from that, the Hon'ble Supreme Court in the case of *Vikram Cement Ltd.* - [2006 \(194\) E.L.T. 3](#) (S.C.) held that the schemes of Modvat and Cenvat credit are not different.

8.12 It is seen from the above, that after re-structuring of Central Excise Tariff from 6 Digit to 8 Digit with effect from 1-3-2005, Rectified Spirit and ENA are exempted by Notification No. 3/2005-C.E. (supra) and the appellant discharged the obligations under Rule 6 of the Cenvat Credit Rules, 2004 in respect of clearance of Rectified Spirit and ENA and therefore, denial of exemption Notification No. 67/95-C.E. (supra) on Molasses captively consumed in Rectified Spirit and ENA cannot be sustained. Accordingly, denial of Cenvat credit on the Molasses purchased from other sugar mill used in the manufacture of Rectified Spirit and ENA are also liable to be set aside. We have also noted that inputs and input service are not exclusively used for generation of electricity and therefore, Cenvat credit cannot be denied.”

5. After appreciating the facts, evidence and following the above decision, we are of the considered opinion that the demand cannot sustain and requires to be set aside which we hereby do.

6. In the result, the impugned order is set aside. Appeal is allowed with consequential relief, if any.

(dictated and pronounced in court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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